

**DEFINITION, REGULATION, AND LICENSURE OF PARALEGALS
IN THE UNITED STATES**

by

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ABSTRACT

This study addresses the paralegal occupation and how it is defined within the context of licensure, control, and regulation in the United States. Drawing upon social theories of the emergence of professions and the concept of degree of professionalization, the author discusses how the organization of occupations into the modern professions has directly influenced governmental regulation. Paralegalism is presented in terms of its status as an emerging occupation. The model of the *professional* (attorney) regulating the *paraprofessional* (paralegal) and controlling the legal knowledge base is explored.

The study identifies measures taken by legislatures, courts, and bar associations and reports each state's definition of *paralegal*, provides the corresponding citation, and advises if mandatory paralegal licensure or certification has been attempted within that state. If attempted, the form of the mandate, *licensure* or *certification*, by whom it was attempted, and the status of the action is provided. Primary data sources employed in this qualitative content-analytic study consisted of state legislative and judicial materials. Secondary data sources consisted of selected documents published by professional organizations. The database was constructed using on-line legal resources and data were analyzed within *states* across the two variables, *definition* and *mandate attempted*.

Although attorneys have embraced the concept of the *paralegal* paraprofessional and various state entities have attempted to define it, the results of this study indicate that there is little evidence of uniformity in *form of definition* across the states. Paralegals are

defined by *statute* in 7 states, *court rule* in 9 states, *court ruling* in 6 states, and *bar association* in 15 states. Thirteen states have no formal definition. No state has adopted mandatory requirements for paralegals even though formal attempts have been made in four. In three of the four states, the action was proposed as mandatory *certification* rather than *licensure*. In each state, the actions were brought by different entities. Discussions for proposals continue in several states.

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TABLE OF CONTENTS

ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iv
TABLE OF CONTENTS.....	v
LIST OF TABLES.....	x
Chapter I.....	1
Introduction	
Background.....	1
Introduction to the Paralegal Career Field.....	1
Introduction to the Study.....	2
Statement of the Problem.....	5
Purpose and Research Questions.....	6
Significance.....	6
Assumptions, Delimitations, and Limitations.....	8
Assumptions.....	8
Delimitations.....	8
Limitations.....	8
Definition of Terms.....	9
Summary.....	11
Chapter II.....	13
A Context for Inquiry	
Paralegals, Attorneys, and the Role of Professional Organizations.....	13
The Nature of Paralegalism.....	13
The Regulation of Attorneys.....	14
The Role of the American Bar Association.....	15
The Role of Paralegal Professional Organizations.....	19
The Role of Legislatures and Courts in Paralegal Matters.....	21
The Nature and Definition of Occupations and Professions.....	23
Occupations and Professions.....	23
Paraprofessionals.....	26

The Links Between Professions and Paraprofessions and Regulation and Licensure	27
Occupational Licensure–Historical Perspective	28
Occupational Licensure–Current Perspective	28
Effect of Regulation and Licensure	29
Summary	30
Chapter III	31
Methodology	
Qualitative Research	31
Qualitative Content Analyses	31
Research Questions and Unit of Analysis	32
Construction of the Database	33
Primary Sources - State Legislative and Judicial Documents	34
Secondary Sources	37
Data Analysis and Coding	41
Initial Analysis	41
Modifications	43
Validity and Reliability	45
Summary	46
Chapter IV	47
Findings of the Study	
Paralegal Definition	47
States Defining Paralegal by Statute	49
States Defining Paralegal by Court	52
States Defining Paralegal by Bar Association Action	57
States with No Formal Definition	59
States with New Definitions Pending	60
Mandate Attempted	63
Supplemental Findings of Interest	67
Education Guidelines and Requirements	67
Voluntary State Certification	68
Rules Relating to Nonlawyer Assistants	68

Summary.....	68
Chapter V.....	70
Summary, Conclusions, and Recommendations	
Summary of the Study.....	70
Summary of the Findings.....	72
Research Question 1: Within Each State, How Are Paralegals Defined?.....	72
Research Question 2: Within Each State, Was a Mandate Attempted?.....	73
Conclusions and Discussion.....	73
Recommendations.....	81
Implications for Future Research.....	82
Concluding Remarks.....	84
References.....	86
Appendix.....	102
Introduction.....	103
Alabama.....	104
Alaska.....	106
Arizona.....	108
Arkansas.....	112
California.....	114
Colorado.....	120
Connecticut.....	124
Delaware.....	128
Florida.....	130
Georgia.....	136
Hawaii.....	139
Idaho.....	145
Illinois.....	147
Indiana.....	150
Iowa.....	153
Kansas.....	155
Kentucky.....	158

Louisiana.....	161
Maine.....	163
Maryland.....	165
Massachusetts.....	167
Michigan.....	169
Minnesota.....	172
Mississippi.....	175
Missouri.....	177
Montana.....	180
Nebraska.....	182
Nevada.....	184
New Hampshire.....	187
New Jersey.....	189
New Mexico.....	192
New York.....	196
North Carolina.....	200
North Dakota.....	202
Ohio.....	205
Oklahoma.....	208
Oregon.....	212
Pennsylvania.....	215
Rhode Island.....	218
South Carolina.....	222
South Dakota.....	225
Tennessee.....	228
Texas.....	230
Utah.....	234
Vermont.....	237
Virginia.....	240
Washington.....	245
West Virginia.....	248

Wisconsin	250
Wyoming	265
VITA.....	267

LIST OF TABLES

Table 1	Data Sources	35
Table 2	States Categorized by Type of Definition.....	48
Table 3	States Defining Paralegal by Statute.....	50
Table 4	States Defining Paralegal by Court Rule	54
Table 5	States Defining Paralegal by Court Ruling.....	55
Table 6	States in which Bar Associations Define Paralegal	58
Table 7	States with Mandatory Licensure or Certification Attempts	64

Chapter I

Introduction

In recent years, a new occupation has surfaced in the United States that provides legal services to consumers under the control and direction of attorneys. Because members of this occupation have not been admitted to the practice of law, those functioning in this paraprofessional capacity are commonly referred to as *paralegals* or *legal assistants*. For the purpose of this study, primarily the word *paralegal* will be used.

Background

Introduction to the Paralegal Career Field

In the late 1960s few attorneys knew the term *paralegal* (Statsky, 1997). By 1985, Johnstone and Wenglinsky were predicting that the introduction of paralegals as a major occupational group would likely alter the nature of legal practice for both practitioners and consumers and impact law office dynamics and bureaucracy. Attorneys who favored efficiency were likely to see paralegals as “highly desirable lawyer adjuncts;” others might not welcome the intrusion into their domain (Johnstone & Wenglinsky, 1985, p. 211).

Most law offices employ paralegals. The United States Department of Labor (DOL) ranks paralegals among the top 10 fastest-growing jobs for the 21st century (DOL, 2001). By 2006, labor officials estimate that 189,000 paralegals will be working throughout the nation, reflecting an increase from the estimated 129,000 paralegals employed in 1997 (D’Antuono, 2000). These numbers are estimates and precise statistics on the total number of individuals employed as paralegals in the United States are not available. Statsky (1997), citing a 1996 Survey of Law Firm Economics published by

Altman, Well, Pensa Publications, Inc., reported 24 paralegals per 100 attorneys, a ratio of approximately one to four.

Promotion by bar associations and the organization of paralegal professional associations have not only upheld the value of paralegals but have also expanded the career field. Statsky (1997) reported that the call for efficiency, delegation of responsibility, and increasing economic pressures were instrumental in bringing paralegalism to its current state of prominence. Because 75% of paralegals are employed under the direct supervision and control of attorneys, there exists an unstated notion that attorneys unofficially manage the paralegal profession (Johnstone & Wenglinsky, 1985; Statsky, 1997). The idea of professionals employing the paraprofessionals and controlling their knowledge base, as set forth by Goode (1969), is descriptive of the relationship between these two professions and lends credibility to the unstated assumption of attorney control. The relationship between these two occupational groups remains in transition although the legitimacy of paralegals as lawyers' assistants has been well established. The impact of the emergence and growth of the paralegal occupation, according to Statsky (1997), has resulted in a trend toward increased regulation of the profession.

Introduction to the Study

During the past half-century, governmental restrictions on entrance requirements into professions and certifications of competence by professional organizations have expanded (Shimberg, 1982). Governments, out of concern for the protection of the public, and professional organizations, in the interest of individual and organizational development, have each sought to regulate those who practice certain occupations. In

1952, the Council of State Governments (Council) declared that governmental restrictions on entrance requirements to a profession serve to protect the public and promote the general welfare. The Council further noted that governmental restrictions on occupations provide the foundation for creating monopolies. Thus, the Council implicitly acknowledged what Gross (1984) later stated, that the solution of restricting the practice of an occupation in an effort to protect the public may be worse than the problem of allowing practitioners to self-regulate.

The matter of governmental involvement in licensure and regulation issues is not new (Gross, 1984). As reported by Shimberg (1982), the practice of trade and professional services flourished primarily because there were extraordinary increases in state legislation requiring governmental examination of licensure issues. Various occupational groups have sought support for the enactment and enforcement of legislation “to establish educational and experience qualifications, to require passage of an examination, and to provide for issuance of a state license as a prior condition for entrance into a profession” (Council, 1952, p. 2). In Shimberg’s (1985) opinion, credentialing systems evolved from a societal need to ensure the competence of practitioners in various professions and occupations. Two such systems have evolved. The system of licensing is based on law and involves a state’s police powers. The alternative, certification, is a voluntary system of self-regulation maintained by non-governmental organizations (Shimberg, 1985). According to Gross (1984), licensing is no longer an esoteric issue but concerns practical questions of public accountability, cost control, occupational recognition, occupational competition, and public dissatisfaction.

Licensing and regulatory control of professions are central in these matters and, as Shimberg (1977) stated

[a] confrontation is developing between the professions and the public over the matter of professional regulation. At issue are two clearly related questions: What is the purpose of licensing? And to whom do licensing boards owe their primary allegiance – the public or to the professional groups they regulate? There is a growing feeling . . . that the purpose of licensing has been subverted. Although licensing laws . . . promise that they would provide assurance of high quality service and protect the public from incompetent practitioners, . . . the powers entrusted to . . . licensing boards are often used to promote the interests of the licensed group at the expense of the public. (p. 154)

Social theories of professions and their emergence describe how licensure systems and issues of control and regulation have evolved. As described by Gross (1984), the organization of occupations into the modern professions has directly influenced governmental regulation of occupations. Occupations measure their emerging status and degree of professionalization through the regulations placed on them. Regulation issues are but one step in the process of an occupation's emergence and indicative of its professional status and organizational structure.

The Council of State Governments (Council) (1952) advised that any movement toward mandatory licensing, typical of emerging occupations, begins with voluntary certification or registration and progresses toward compulsory licensure. Citing a 1931 Kansas statute regarding registered professional engineers as an example, the Council asserted that voluntary certification does not restrict the practice of a profession, but rather, guarantees the right of title to those who meet the qualifications. The desire to protect the registered or certified individual from the competition of the unqualified led the nursing profession to strive for mandatory licensing laws (Council). Increased standards often accompany the move from voluntary certification to mandatory licensing.

Motives underlying compulsory licensure stem from a combination of self-interests and interest in the public welfare (Council, 1952).

Statement of the Problem

As the paralegal profession has emerged, some state entities may have determined that the public interest is best served by governmental regulation through occupational licensing and therefore have attempted to mandate licensure. Micheletti (2000) identified a general unconcern by attorneys regarding regulation and licensure in the paralegal career field. However, attempts to mandate licensure may indicate a growing concern. In several states mandatory regulation of paralegals in the form of occupational licensing has recently been proposed (National Association of Legal Assistants [NALA], 1999c).

Paralegal definition and regulation issues warrant careful consideration. In her 1998 response to the New Jersey Supreme Court Committee on Paralegal Education and Regulation, Vicki Voisin, NALA President, declared the issues to be confusing and poorly understood. Occupational regulation is a national problem; but, because it is controlled at the state level, measures set forth by various state entities must be identified and studied. Unlike other occupations, especially the established professions, paralegals generate little research or writing about their occupation (Johnstone & Wenglinisky, 1985). Although most certain to impact legal services, Statsky (1993) reported that no studies had been conducted to assess the potential effect of paralegal regulation. Robert LeClair, president of the American Association for Paralegal Education (AAfPE), (personal communication, October 30, 2001) advised that there is no central repository for information on paralegal definition nor does there exist a “Fort Knox” of facts on regulation issues. The resource generated by this study provides a state-by-state directory

to paralegal definition and regulation and is of value as a foundational guide to an emerging paraprofession.

Purpose and Research Questions

This study addressed the uncertainties of how paralegals are defined and regulated across the states. To that end, the purpose of this study was to construct a resource that summarized paralegal definition and regulation within each state. In view of the considerations given, the following queries were posed:

Within each state:

1. How are paralegals defined?
2. Has mandatory paralegal licensure or certification been attempted? If so, was the form of the mandate attempt *licensure* or *certification*, by whom was it attempted, and what is the status of the action?

Significance

Several benefits of a state-by-state analysis and summary of paralegal definitions are apparent. First, the resource generated by this study aids the legal community because key information is accessible in a central location. Easy availability and retrieval encourages those with vested interests in the profession to utilize an existing database. As states seek to define or regulate paralegals, the entities responsible for researching, reporting, and recommending changes will find a state-by-state summary a useful tool. In addition, state policymakers or judicial bodies may find references to other states' treatment of similar issues enlightening or useful in their decision-making processes. In that regard, it serves to improve future definition and regulation implementation.

The study suggests some of the justifications for the regulation of the paralegal paraprofession. Factors impacting the formation of the definitions may become apparent. Finally, this study affords the profession an opportunity to assess the available data and determine what aspects of related issues should be studied.

In addition, practitioners, future practitioners (students), and educators must be aware of how definitions and educational requirements vary among states. Current definitions within most individual states contain broad language, but a few are beginning to include educational criteria or guidelines. Nonetheless, numerous organizations, for both attorneys and paralegals, have a vested interest in the emerging educational standards, whether for purposes of entry into the profession or purposes of continuing legal education. Paralegal educators advising students and planning curricula must be aware of existing recommendations and requirements as well as the potential for future credentialing systems. Without adequate knowledge of how occupational educational criteria vary or may potentially vary among states, educators and administrators are ill equipped to prepare students.

As previously stated, paralegals have generated limited research about their occupation. Until the occupation is well defined and practice limitations, if any, are outlined, little meaningful research can be produced. According to Barnhart (1997), in *The Guide to National Professional Certification Programs*, regulation issues impact more areas of professional development than any other trend in human resources. This study will fill gaps in the existing knowledge base and promote expansion in paralegal professional development. In summary, the final product generated by this study serves as a valuable resource to all stakeholders, whether practitioners, educators, professional

organizations, employers, or policymakers, and acts as a foundation from which future inquiries may be generated.

Assumptions, Delimitations, and Limitations

Assumptions

The following assumptions were made:

1. Various state entities have defined *paralegal* within the text of *statutes* and *court rules* or *rulings* or by *bar association* publications. Some states have attempted to regulate paralegals by mandating licensure or certification.

2. The Internet sites utilized for purposes of data collection maintain current, accurate information.

3. The content of the professional organizations' websites is comprehensive with regard to pertinent issues.

Delimitations

The following delimitations apply to this study:

1. Documents utilized for purposes of analysis were delimited to those obtainable from Internet sources.

2. Secondary materials were limited to publications of paralegal professional organizations and bar associations available on their websites.

Limitations

The following limitations are associated with this study:

1. Findings may be subject to other interpretations.

2. Only documentary resources were utilized.

3. Selection of documents for analysis and review may be subject to researcher bias.

4. Law is ever-changing. Therefore, the state-by-state summary generated by this study is applicable to a given point in time.

Definition of Terms

In attempting to regulate the paralegal occupational group, many confuse the word *certification* with *licensure* (Statsky, 1993). Any discussion concerning regulation of the profession, at the state or national level may, according to Statsky, hinge on whether licensure or certification is the proper regulatory tool and not on whether the profession should be regulated. Because terms such as *certification*, *licensure*, *regulation*, and *credentialing* can overlap and be confusing and usage can vary, the concepts must be defined and discussed.

Certification is a voluntary process by which a nongovernmental agency or association grants recognition to an individual who has met certain predetermined qualifications specified by that agency or association (Shimberg, 1982). For paralegals, such qualifications may include: (a) graduation from an accredited program; (b) acceptable performance on a qualifying examination or series of examinations; and/or (c) completion of a given amount of work experience (National Federation of Paralegal Associations [NFPA], n.d., p. 1). Certification implies title protection as only those who are certified may use a particular title (Voisin, 1999, note 4). Shimberg and Roederer (1994) noted, however, that certification is often used interchangeably with *licensure*, particularly in the context of a state agency regulation. The authors further posited that confusion surrounding *certification* and *licensure* may never be resolved because of the historical use of the terminology.

Licensure is the process by which a branch or agency of government: (a) grants permission to persons meeting predetermined qualifications to engage in a given occupation and use a particular title; or (b) grants permission to institutions to perform specified functions (NFPA, n.d. p. 1). Licensure is a more restricting term and generally refers to the mandatory governmental requirement necessary to practice in a particular profession or occupation. Licensure implies both practice protection and title protection because only individuals who hold the license are permitted to practice and to use a particular title (Voisin, 1999, note 4). Licensing is the most restrictive form of occupational regulation because it prohibits anyone from engaging in the activities covered by the *scope of practice* without permission from a governmental agency (Shimberg, 1982). Over the years the public has become accustomed to viewing *licensing* as government's effort to protect society from incompetents (Shimberg & Roederer, 1994).

Regulation is a generic term that encompasses both certification and licensure. It refers to a process by any granting authority for recognition to an individual or institution (NFPA, n.d.).

Credentialing generally refers to any documentation giving evidence of one's authority and encompasses certification and licensure, as well as educational achievements and experience (NFPA, n.d.).

Other definitions germane to the study are defined as follows:

Bar association shall mean *state bar association* – “an association or group of attorneys that have been admitted to practice law in a given state” (Garner, 1999, p. 143).

Court rules – “regulations having the force of law and governing practice and procedure in the various courts” (Garner, 1999, p. 369).

Court ruling – “the outcome of court’s decision either on some point of law or on the case as a whole” (Garner, 1999, p. 1334).

Independent paralegal – an individual employed or retained on a contract or case-by-case basis (NFPA, n.d.).

Nonlawyer or *Non-lawyer* – one not entitled to practice law.

Practice of law – “the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law” (American Bar Association [ABA], 2002, ¶ 1).

Statute – “a law passed by a legislative body” (Garner, 1999, p. 1420).

Sunrise – “proposed regulatory legislation and supporting materials drafted by the professional group seeking regulation and reviewed by a legislatively-enacted body that recommends to the legislature whether regulation is appropriate and, if so, the type of regulation” (Shimberg & Roederer, 1994, p. 37).

Unauthorized practice of law (UPL) – engaging in actions defined by a legal authority as constituting the *practice of law* without legal authorization to do so (Miller & Urisko, 1996).

Summary

Johnstone and Wenglinsky (1985) predicted that the emergence of the relatively new occupational group, paralegals, would likely alter the nature of legal practice.

Statsky (1997) believed that the impact of the growth of this profession would result in a trend toward increased occupational regulation. Statsky (1993) further noted a general

lack of studies to assess the potential affect of paralegal regulation. Paralegal definition issues warrant careful consideration. As noted by Robert LeClair, president of the American Association for Paralegal Education (AAfPE), there is no central repository for information on paralegal definition and regulation issues. This study addresses definition, regulation, and licensure of paralegals within the United States by providing a state-by-state directory of information.

Chapter II

A Context for Inquiry

This chapter presents an overview of paralegal professional organizations and discusses the role of state legislatures, courts, and bar associations in regulation issues impacting the legal profession and, in particular, paralegals. Further, the chapter examines and explains the social theory of professions as it relates to the growth and emergence of occupations along the professional continuum. Finally, occupational licensing is reviewed in the context of social control.

Paralegals, Attorneys, and the Role of Professional Organizations

The Nature of Paralegalism

Johnstone and Wenglinsky (1985) asserted that law is frequently a means of social control and described it as “the authority of governments being brought to bear [on occupations] through formal rules and regulations promulgated by legislatures, courts, and administrative bodies” (p. 153). As is true of most occupational groups, paralegals encounter problems associated with social control. Johnstone and Wenglinsky suggested that these pressures are due, in part, to the paralegal profession being an underdeveloped vocation. Its membership is struggling to establish an occupational identity. The authors further stated that attorney dominance contributes to the dilemma.

According to Kidder (1983), “the rise of the legal profession as a *profession* was the result of a deliberate strategy to capture and control the marketplace for legal services” (p. 216). In other words, attorneys have effectively deterred others, including paralegals, from competing with them. Lawyers have long-established monopolies in the legal market. Bar associations were, and are, instrumental in regulating the profession and restricting others from practicing (Johnstone & Wenglinsky, 1985).

The Regulation of Attorneys

To a significant extent, attorneys are self-regulated in that they establish the majority of the rules governing their profession. These rules, however, are enforced by state authorities (Miller & Urisko, 1996). According to Miller and Urisko, attorneys' justification for self-governance is that they can protect the public in two important ways. First, by establishing educational and licensing requirements, the legal profession ensures that anyone practicing law is competent to do so. Second, by defining specific ethical requirements for attorneys, the legal profession protects the public against unethical behavior. Although procedures for regulating attorneys vary slightly state to state, key participants in determining the governance rules, as well as the practice of law, include bar associations, state supreme courts, and state legislatures (Miller & Urisko). In addition, these entities formulate rule enforcement procedures.

Bar Associations. Lawyers determine the requirements for entry into their profession and the rules of conduct they follow. Traditionally, attorneys have formed professional groups termed *bar associations* for that purpose. Those organizations operate at national, state, and local levels to discuss issues affecting the legal profession and to decide on professional standards of conduct (American Bar Association [ABA], 1999). In most states, membership in the state's bar association is a prerequisite for licensure (ABA). According to Miller and Urisko (1996), approximately one-half of all attorneys in the United States are members of our nation's largest voluntary professional organization, the American Bar Association (ABA). The ABA's *Code of Professional Responsibility* describes how "[t]he public interest is best served in legal matters by a regulated profession" (ABA, n.d., EC 3-3).

State Courts. Each state's highest court is usually the ultimate authority on attorney regulatory issues for that state (Miller & Urisko, 1996). Supreme court justices decide under what conditions attorneys are licensed. The state bar associations work closely with the courts to establish guidelines and recommend rules and requirements to the courts (ABA, 1999). If the courts so order, the rules become law. Under the authority of the courts, state bar associations often perform routine regulatory functions, including disciplinary proceedings (Miller & Urisko).

State Legislatures. State legislatures regulate the legal profession by enacting legislation. In a few states, the highest courts delegate regulatory responsibilities to the legislatures, which include the power to discipline attorneys (Miller & Urisko, 1996). The right to practice law is accomplished at the state level by the procedure of licensing. States vary on licensure requirements. According to Miller and Urisko, beginning in the mid-1850s, restrictions on who could or could not practice law were given statewide effect by statutory prohibition of the *unauthorized practice of law* (UPL). Court decisions relating to UPL also date to this period (Miller & Urisko). By the 1930s, essentially all states had enacted legislation prohibiting anyone but licensed attorneys from the practice of law (ABA, 1999). In addition to licensing regulations, attorneys are controlled through ethical codes and rules adopted at the state and national level.

The Role of the American Bar Association

For more than 80 years, the ABA has provided leadership in ethics and professional responsibility through the adoption of professional standards that serve as models of the "regulatory law governing the legal profession" (ABA, 1999, p. vii). As early as 1836, a law professor created a publication containing 50 resolutions concerning

professional development (Miller & Urisko, 1996). Others followed the precedent, which resulted in the publication of an attorney *Code of Ethics*. In 1908, the ABA approved the declared principles and renamed them the *Canon of Ethics* (ABA, n.d.). Today's *Model Code of Professional Responsibility* (Model Code), consisting of canons, ethical considerations, and disciplinary rules for attorneys, is based on the *Canon of Ethics* (ABA, n.d.).

A portion of the ABA's Model Code is termed *Model Rules of Professional Conduct* (Model Rules) and it plays an essential role in the regulation of legal professionals. Indeed, ABA Model Rule 5.3 has significance for both attorneys and paralegals:

Rule 5.3. Responsibilities regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be in violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders, or with the knowledge of the specific conduct, ratifies the conduct involved, or
 - (2) the lawyer is a partner in a law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the

ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. (ABA, 1999, p. 439)

In actuality, the ABA justifies its involvement in the approval of paralegal education programs by virtue of the fact that attorneys are ultimately liable for the work of the paralegals they employ (ABA, 1997).

The ABA has been involved in promoting the paralegal career since 1968 (American Association for Paralegal Education [AAfPE], n.d.). Since its inception, many believed the paralegal occupation to be a service to the public in that it allowed legal services to be delivered in a cost-effective manner (ABA, 1995; NFPA, n.d.). The paralegal profession began to flourish after the ABA declared it a viable productive partner in the legal profession (NFPA, n.d.). In the late 1960s, there was a strong push for attorneys to legitimize the paralegal occupation. The condition for legitimization was that paralegal practitioners were to be subordinates and dependents of lawyers (Johnstone & Wenglinsky, 1985). The ABA's definition of *paralegal* reflects this contingency:

A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible. (ABA, 1997, ¶ 1)

The current definition replaces the definition adopted by the ABA Board of Governors in 1986 (ABA, 1997). It adds the term *paralegal* and “streamlines the 1986 definition . . . [to more] accurately reflect how legal assistants are presently being utilized in the delivery of legal services” (¶ 2).

In 1992, the ABA created a Commission on Nonlawyer Practice to examine the issue of how legal professionals can provide high-quality services to all consumers (ABA, 1995). Since its formation, the Commission has been holding hearings across the nation, and, based on its findings, will ultimately make recommendations for the ABA's consideration (ABA, 1995). Discussions center on attorneys' claim that only lawyers can perform work they have proclaimed as *legal* (Miller & Urisko, 1996). It marks the first time in 20 years that the profession has conducted a national discussion acknowledging changes in the entities that have been delivering legal services (Needham, 2000). In Needham's opinion, the "heart of the matter is the struggle to determine whether or not we can draw a clear boundary around work that can be performed only by persons who have passed the current competence and character evaluations to become licensed attorneys" (p. 1327).

Because the debate touches on a vital public concern, that of providing of legal services to the public in a cost-effective manner, it directly impacts paralegals and, consequently, paralegal education. The ABA justifies its involvement in paralegal education programs utilizing this argument, as well as the line of reasoning previously stated, that attorneys are liable for the work of the paralegals they employ (ABA, 1997).

Since 1975, the ABA has been approving and regulating all paralegal education programs based on a recommendation by its Standing Committee on Legal Assistants (SCOLA) (AAfPE, n.d.; Statsky, 1997). The ABA approval of paralegal education programs has been controversial and was challenged from its beginning by some paralegal professional organizations because it represents another aspect of attorney control of the paralegal profession (Statsky, 1997). Nonetheless, as previously noted and

evidenced by Model Rule 5.3, the legal profession has a strong interest in creating standards for paralegals.

According to Johnstone and Wenglinsky (1985), the ABA addressed mandatory paralegal licensure or certification in the 1970s and concluded that a position on the issue was premature. Recent efforts by the National Federation of Paralegal Associations (NFPA) to gather position statements from state bar associations regarding mandatory regulation have yielded incomplete results (NFPA, n.d.). Bar involvement in paralegal issues is neither promoted nor discouraged by paralegal professional organizations. The NFPA (n.d.) suggested that if bar associations do not support paralegals or afford them a vote on issues affecting their career field in bar matters, then paralegal organizations may decide to disregard attorneys' views on paralegal issues. Like attorneys, paralegals have formed professional organizations to further their occupational interests, both nationally and at the state level.

The Role of Paralegal Professional Organizations

Paralegals first organized in 1975 by creating the non-profit organization, the National Association of Legal Assistants (NALA), based loosely along the lines of the ABA. The intended purpose for the creation of the NALA was to offer continuing education programs, establish professional standards for paralegals, and serve the legal community by providing direction for the growing field of paralegalism ("Paralegal Certification," 1996). In addition to the NALA, the National Federation of Paralegal Associations (NFPA) was established in the mid-1970s and is the only other major national paralegal professional organization (NFPA, 1999).

Nationally the paralegal occupation is unregulated, but it does have voluntary certification systems established by paralegal professional organizations. In November of 1976, the NALA administered its first national paralegal certification examination and, according to Statsky (1977), this event marked the beginning of regulation and licensure issues in the paralegal career field. Today, the NALA's certification, *Certified Legal Assistant (CLA)*, is the most widely recognized paralegal professional credentialing program in the United States and it is strictly voluntary (NALA, 2000). The NFPA has developed a comparable voluntary certification examination termed *Paralegal Advanced Competency Exam (PACE)* (NFPA, 1999). Historically, paralegal professional organizations have been opposed to mandatory regulation of the profession in the form of licensure as imposed by state governmental agencies (Voisin, 1998).

Each professional organization has maintained its separate definition of *paralegal* or *legal assistant* in addition to offering a voluntary certification credential. NALA's definition is:

Legal assistants, also known as paralegals, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney. (NALA, n.d., ¶ 1)

The NFPA defines *paralegal* or *legal assistant* as:

A paralegal/legal assistant is a person qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work. (NFPA, n.d., ¶ 1)

Paralegal educators have established their own professional organization, the American Association for Paralegal Education (AAfPE). Founded in 1981 at a meeting of paralegal educators held at the ABA headquarters in Chicago, the primary concern leading to the creation of this association was the approval process for paralegal schools and a desire to maintain ABA involvement in that process (Johnstone & Wenglinsky, 1985).

The Role of Legislatures and Courts in Paralegal Matters

State legislatures, by enactment of statutes, and state courts, via rulings and administrative decisions, have defined and declined to define issues of regulation pertaining to the paralegal profession. While the Council of State Governments (Council) (1952) and others have proposed that states view licensure as a tool to protect the public and promote the general welfare, the NALA (1999a) advised that the benefits of regulation must outweigh potentially adverse effects. Unless there is a demonstrated public need, legislatures, administrative agencies, and courts should be reluctant to establish a mandatory system. Voluntary certification programs are, however, generally accepted by the courts and employers as valid systems for assisting in establishing standards for the profession (NALA, 1999a).

In many states, Virginia for example, no movement toward mandatory certification or licensure has occurred. The Virginia State Bar (VSB) has adopted a definition of paralegals that encompasses language to the effect that imputes all responsibility for paralegals directly to the attorneys by whom they are employed (VSB Standing Committee on the Unauthorized Practice of Law, 1996). This definition implies that because paralegals work directly under their supervision, the attorneys “assume

professional responsibility for the final work product” (NALA, 1999b, p. 21). In this manner, the Bar deems the public to be protected. Notwithstanding, the VSB’s Standing Committee on the Unauthorized Practice of Law (UPL) has proposed a new rule to be added to the UPL rules (Virginia State Bar, 2002). The proposed rule not only defines *paralegal* or *legal assistant* but also purports to clarify and delineate what services a paralegal can and cannot perform (Virginia State Bar).

Other states have made major legislative attempts toward compulsory regulation. One such state is New Jersey (Ritter, 1999). The Supreme Court of New Jersey issued a decision that effectively quashed what had been widely proclaimed as the most sweeping initiative in the United States toward regulation of the paralegal profession (Ritter). The Court’s ruling encouraged, however, a credentialing system as a means of recognizing qualified paralegals and explored all aspects of paralegal performance, including education (Ritter). The Court identified several options and encouraged the paralegal profession and its constituents to do the following:

- work together to identify and promote educational programs that enhance the performance of current and future paralegals
- establish a code of professional conduct
- consider developing an appropriate credentialing system to recognize qualified paralegals. (NALA, 1999a, p. 29)

As issues of regulation and licensure emerge and resolutions are considered by various agencies, attorneys and paralegals alike must understand their roles and relative positions. Because the functions of paralegals are diverse, attempting to define their occupation through legislation or court ruling may result in an understatement of their vocational abilities. Goode’s (1969) depiction of an intermediate occupation as one that

falls between the superordinate and subordinate provides an accurate description of the paralegal occupation.

The Nature and Definition of Occupations and Professions

Occupations and Professions

Occupations are “complex social roles” and, according to Johnstone and Wenglinsky (1985), can be analyzed in terms of the extent to which they have specific professional or bureaucratic characteristics, or a combination of both (p. 153). Attorneys and physicians are examples of occupational groups classified as *professionals*; and workers, such as clerks and factory employees, are examples of groups classified as *bureaucrats*. Paralegals, as an occupational group, make use of both professional and bureaucratic organizational characteristics. “They are one instance of the playing out of the conflict between the professional and bureaucratic models of organization that keep vying for dominance in the modern world” (Johnstone & Wenglinsky, 1985, p. 185). Paralegalism, as an occupation, can be examined within the context of the nature and process of professionalization and professions.

According to Toren (1969), the nature of professions and the process of professionalization have been dealt with extensively in social writings and have resulted in various descriptions of professions. Ritzer (1977) reported that there are varying degrees of professionalization rather than a simple dichotomy between professions and nonprofessions.

In an attempt to measure the degree of professionalization of an occupation, Carr-Saunders (1955) defined major profession types:

- 1) *established professions* – law, medicine and the Church share two basic attributes; their practice is based upon the

theoretical study of a department of learning; and the members of these professions feel bound to follow a certain mode of behavior;

2) *new professions* – those which are based upon their own fundamental studies, such as engineering, chemistry, accounting, and the natural and social sciences;

3) *semi-professions* – those who replace theoretical study by the acquisition of technical skill. Technical practice and knowledge is the basis of such semi-professions as nursing, pharmacy, optometry and social work;

4) *would-be professions* – those requiring neither theoretical study nor the acquisition of exact techniques but rather a familiarity with modern practices in business, administration practices and current conventions. Examples include hospital managers, sales managers, work managers, etc. (Toren, 1969, p. 143)

Ritzer (1977) asserted that all occupations can be placed on a continuum ranging from *nonprofessionals* to *established professionals* and stated that an occupation is positioned on the professional continuum by the number of professional characteristics it has and to what degree it possesses each characteristic. His definition of *profession* is “a type of occupation that has had the power to have undergone a developmental process whereby it has been able to acquire, or convince . . . others (e.g., clients, the law) that it has acquired, a high degree of . . . characteristics we have come to accept as denoting a profession” (p. 44).

In Carr-Saunders’ (1955) definition of professions, semiprofessions are located in the middle of what Ritzer (1977) called the *professional continuum*. Other social theorists have set forth alternate criteria for measurement when defining professions. For example, Toren (1969) noted that any classification of professionalization must first and foremost be founded on a distinction among the types of knowledge upon which the

profession is based and, secondly, upon the attributes or characteristics of professionalization. Her premises are summarized as follows:

1. Professions are based on a body of theoretical knowledge.
2. Members of the profession command special skills and competence in the application of this knowledge.
3. Members' professional conduct is guided by a code of ethics, the focus of which is service to the client.

Toren stated that professions have developed such that a profession may rank higher in respect to one characteristic and lower in respect to another. For instance, in the career field of social work, although the service component to the client is strongly emphasized, its knowledge-based component is not comparable to that of other professions.

With respect to the knowledge-based component as described by Toren (1969), Goode (1969) noted that most occupations do not develop a sufficient knowledge base to acquire professional status. He theorized that this occurred because, on both the prestige and economic markets, the aspiring profession must be able to control a more substantial body of codified, applicable knowledge than that controlled by other occupations (Goode). Indeed, most professionals do not use much of their abstract knowledge. For most problems, they do not really apply principles to concrete cases, but instead apply concrete cases to concrete cases (Goode). Hypothesizing that most professional practitioners are overtrained, but such overtraining is a guarantee that they can easily handle day-to-day situations, Goode asserted that it was primarily due to the overlapping knowledge between superordinate and subordinate occupations that the intermediate occupations have developed.

The paralegal vocation is an example of an occupation that most likely will not develop a sufficient knowledge base as to acquire professional status. On both the prestige and economic markets, paralegals are unable to control a substantial body of codified, applicable knowledge comparable to that controlled by attorneys, the *professionals* in the legal domain. The paralegal profession, by Goode's (1969) definition, is an example of an intermediate occupation. Johnstone and Wenglinsky (1985) maintained that the workers in the intermediate occupations, not capable of becoming *new professionals* as defined by Carr-Saunders (1955), are now referred to as *paraprofessionals*.

Paraprofessionals

Paraprofessionals, by definition, are individuals who perform the same tasks as do professionals, but who also perform tasks too rudimentary to be efficiently performed by professionals (Johnstone & Wenglinsky, 1985). Generally, paraprofessionals are employed by professionals and extend professional services to allow professionals to concentrate on more indispensable responsibilities. To distinguish the classification *semiprofessionals* from that of *paraprofessionals*, Johnstone and Wenglinsky maintained that semiprofessionals do not generally extend the work of professionals, as do paraprofessionals, but instead have a discrete occupation of their own. Although both *semiprofessionals* and *paraprofessionals* have responsibility to clients, they are still subject to the control of *professionals* who "lay down the limits to the service which can be rendered . . . and determine its kind and quality" (Johnstone & Wenglinsky, 1985; Toren, 1969, p. 145). Not as many *semiprofessionals* are employed by *professionals*, as

are *paraprofessionals*. Both groups do, however, resemble each other in terms of credentialing and occupational prestige (Johnstone & Wenglinisky).

Expanded reliance on paraprofessionals has become predominant in many professions and resulted in organizational changes. In medicine, for example, laboratory and x-ray technicians and nurse practitioners, all classified as *paraprofessionals*, have changed that career field from practitioner-based to largely hospital-based (Johnstone & Wenglinisky, 1985). The efforts of all occupations to elevate or maintain their positions on the professional continuum are a source of a societal, as well as bureaucratic, change (Goode, 1969). Goode proposed this to be particularly true of semiprofessions and new professions. Because paraprofessions fall between these two classifications, by implication, the same may be said to be true for them. According to Statsky (1997), the struggle for position on the professional continuum is an example of social control that ultimately manifests itself in the form of increased regulation.

The Links Between Professions and Paraprofessions and Regulation and Licensure

Wilensky (1964) formulated a framework for the study of the process of professionalization that set forth a sequence of established events characteristic of the emergence of a profession. One step in the sequence of events typical of an emerging profession, or, as in this case a paraprofession, is name protection in the form of regulation (Wilensky). As paraprofessions emerge, those within their organization may seek to improve their status by promoting self-regulation and voluntary certification. Outsiders may determine that the public interest is better served through governmental regulation via occupational licensure.

Occupational Licensure–Historical Perspective

Historically, there were only two professions licensed in the United States, law and medicine (Gross, 1984). It was the case of *Dent v. West Virginia*, 129 U.S. 114 (1889), that opened the door to occupational licensing. Within two decades following the decision in this now historic case, 21 occupations were licensed in the United States under 195 different state licensure laws (Gross).

The process by which occupations become licensed has developed primarily because of actions by the established professions of law and medicine (Gross, 1984). The more political power their professional associations developed, the more they were able to change licensing laws from those that restricted the use of an occupational title to laws that reserved the practice of an occupation only to those holding a valid license (Gross). In this manner, professional associations monopolized practice for their members. The established professions became institutions to conserve the authority of an elite class at a time when other sources of economic and social power were diminishing (Gross).

Occupational Licensure–Current Perspective

According to Rottenberg (1980), occupational licensure now appears in the United States in three forms: state statutory licensure, name use by state statutory permission, and certification. In the strongest and most authentic form, statutory law defines functions and tasks of an occupation and prescribes that persons other than those licensed by the state may not legally perform these tasks. In addition, statutes define the manner by which individuals may obtain the occupational license. In what Rottenberg described as a weaker form of occupational licensing, statutory law permits any person to offer services to the public but only those who have qualified by examination may use the

title of the occupation. The weakest statutory form of occupational licensing, as noted by Rottenberg, is that of certification which allows any person to perform tasks associated with the occupation but the state administers a periodic examination and certifies only those who pass.

Effect of Regulation and Licensure

In 1952, the Council of State Governments (Council) reported that extraordinary increases in state legislation requiring governmental examination of licensure issues have occurred in an effort to put into practice trade and professional services. Numerous occupational groups have sought support for enactment and enforcement of legislation to “establish educational and experience qualifications, to require passage of an examination, and to provide for issuance of a state license as a prior condition for entrance into a profession” (Council, p. 2). The Council further stated that the process of licensing has become one of the most important mechanisms by which government regulates sections of the economy. Parsons (1952) proclaimed the essence of licensing to be permission to perform and that such permission “may be granted or denied, renewed or refused to be renewed, withdrawn temporarily through suspension, or withdrawn altogether through revocation Licensing authority enforces the meeting of minimal conditions of entry” (p. 2). Licensing, in general, is used by governments as a regulatory device. The Council advised that private groups might use licensing as a means of employing government to standardize admission requirements and minimize competition while protecting the public. Citing licensure as a proper exercise of the police powers of the states, the Council acknowledged that states’ rights to regulate trades or professions have long been accepted.

The legitimate purposes for licensing are compelling. However, a system that appears to operate to benefit those who serve the public raises questions about whether it can accomplish what its proponents promise it can (Gross, 1984). Licensing has long been thought to be the unquestioned right of certain occupations. Only a few years ago, issues of licensure, certification, and regulation were generally thought to be the concern of just *professional* individuals and their organizations (Gross). Because licensing is tied to social, political, and economic forces and issues, it encompasses an ever-increasing number of occupations in this country.

Summary

Wilensky (1964) proclaimed that occupational groups of the future would combine some elements of professionalization in the emergence of their occupational status. Furthermore, he alleged that licensing and certification are examples of “weapons in the battlefield of professional authority” and territorial boundary issues (p. 145). In his view, the turn toward legal regulation might be used by an occupation to seek status enhancement or job protection. It might also be used against occupational groups. Regulation issues involving paraprofessionals must be resolved to the satisfaction of the occupational group, their superordinate professionals, and the public.

Johnstone and Wenglinsky (1985) posited that licensure of paralegals might pose a potential threat to attorneys by breaking down long-established practice barriers, ultimately permitting paralegals to represent clients independently. Emergence of this paraprofession has, indeed, caused an undercurrent of concern among attorneys. Control of the future the legal profession may be at stake.

Chapter III

Methodology

The purpose of this study was to construct a resource that summarized paralegal definition and regulation within each state. The report generated by the analysis recites each state's definition of *paralegal* and corresponding citation and advises if mandatory paralegal licensure or certification has been attempted within that state. The information comprising the final product was collected and analyzed by means of a qualitative content-analytic technique. This chapter details the technique and rationale used for collection of data and explains the analysis. In addition, it discusses matters of validity and reliability in relation to the study.

Qualitative Research

Qualitative research methods have become increasingly important modes of inquiry for the social sciences and applied fields. According to Marshall and Rossman (1995), qualitative research serves to identify important variables for subsequent explanatory or predictive research. It is “guided by the belief in the primacy of *subject matter* over method” (Fidel, 1993, p. 221). Although qualitative research is uniquely suited to uncovering and exploring new avenues, its greatest strength is in its capacity to describe in detail a phenomenon under study (Miles & Huberman, 1984, 1994). The phenomenon studied was paralegal definition and regulation within each of the 50 states.

Qualitative Content Analyses

Cartwright (1966) stated that qualitative research is capable of classifying, describing, and qualifying the communications of individuals or groups of people. Holsti (1969) defined *communications* as consisting of “a source or sender, an encoding process which results in a message, a channel of transmission, a detector or recipient of the

message, and a decoding process” (p. 24). Documents are communications that rely on written language to convey a message or give meaning (Gall, Borg, & Gall, 1996). Systematic documentary studies of a qualitative nature constitute an important and significant form of a technique called *content analysis* (Holsti).

Content analysis is a multipurpose research methodology used for the objective and systematic description of the content of communications (Berelson, 1952; Gall et al., 1996; Holsti, 1969). Analysis may be performed on any type of document (Gall et al.). Numerous applications of content analysis have been advanced and varying types of evidence have been derived through content analysis (North, Holsti, Zaninovich, & Zinnes, 1963). Moreover, the analysis may be qualitative or quantitative (Goldenberg, 1992). Qualitative content analysis is especially called for, however, where theory verification is not the primary goal (Berelson). Based on the definition and description of content analysis and given the purpose of the study, I employed a qualitative content-analytic technique to answer the research questions.

Research Questions and Unit of Analysis

The research questions for this study were:

Within each state:

1. How are paralegals defined?
2. Has mandatory paralegal licensure or certification been attempted? If so, was the form of the mandate attempt *licensure* or *certification*, by whom was it attempted, and what is the status of the action?

The *unit* in content analysis is “the individual ‘thing’ that is the subject of the study – what is studied, . . . the element on which data are analyzed and for which

findings are reported” (Neuendorf, 2002, p. 13). Babbie (1998) explained the units of analysis as the “individual units about which or whom descriptive and explanatory statements are to be made” (p. 310). The unit of analysis for this research consisted of the individual *states* within the United States.

Construction of the Database

Because Krippendorff (1980) advised that the logic of content analysis requires the researcher to describe, in detail, the conditions under which the data were obtained, this section is devoted to a step-by-step explanation of data collection. According to Asher (1984), there are “myriad ways to . . . collect data. The choice is primarily a function of the needs and requirements of the research” (p. 16). Glassner and Corzine (1982) stated that the beginning steps in qualitative content analyses are the uncovering of the accessible universe of documents. Babbie (1998) characterized this as *establishing the sampling universe*. By necessity, the sampling universe, or primary data source for this study, consisted of state legislative and judicial materials. In addition, a secondary data source, consisting of selected documents published by professional organizations, comprised a portion of the sampling universe.

Bast and Hawkins (2002), in their text, *Foundations of Legal Research and Writing, 2nd Edition*, stated that “no single vocation is better suited to using the Internet as a resource tool than the legal profession” (p. 322). They advised that reputable on-line legal resources have the advantage of being able to supply a real-time global database of official information delivered to a desktop without ever leaving an office. In their opinion, Internet research provides a “much broader collection of legal information than would be possible under normal circumstances” (p. 322). Limiting the “searchable

universe to only law-related sites greatly increases the accuracy and reliability of your search” (p. 305). For the reasons stated by Bast and Hawkins, I chose to construct the database for this study using on-line legal resources. Table 1 depicts the data sources utilized.

I began by collecting data utilizing LexisNexis, an on-line, full-text legal database that allows user-framed queries. According to Bast and Hawkins (2002), the LexisNexis database offers the world’s largest full-text collections of legal information. LexisNexis is available by subscription only and is not available to the general public without payment of a fee (Neuendorf, 2002). In addition, I referenced Judith Long’s (2003) book, *Computer Aided Legal Research*. Long described the LexisNexis database as being “organized into ‘libraries’ for broad categories of material and into ‘files’ for more specific categories” (p. 187). A LexisNexis *library* is “a large collection of related materials for a given area of legal research or general topic. . . . Libraries are comprised of files, individual or group” and include information assembled by state (Bast & Hawkins, 2002, p. 281). Neuendorf (2002) described LexisNexis as a vital resource for content analysts.

Primary Sources - State Legislative and Judicial Documents

I utilized LexisNexis to systematically conduct a state-by-state search of legislative and judicial documents. I began via the *Basic Legal Research* feature of the database and opened a section entitled, *Codes & Regulations - State Code*, which revealed a screen listing the 50 states. By individually clicking on the name of each state and proceeding in alphabetical order, I generated a user-framed query of each state’s Code, Constitution, Court Rules, and Advance Legislative Service by means of

Table 1

Data Sources

Source	Period Searches Performed
LexisNexis - State Codes - State Case Law	05/01/02 – 10/01/02
FindLaw - State Bar Associations [http://www.findlaw.com]	05/01/02 – 10/01/02
American Bar Association (ABA) [http://www.abanet.org]	09/23/02 – 11/02/02
National Association of Legal Assistants (NALA) [http://www.nala.org]	05/01/02 – 10/01/02
National Federation of Paralegal Associations (NFPA) [http://www.paralegals.org]	05/01/02 – 09/15/02
American Association for Paralegal Education (AAfPE) [http://www.aafpe.org]	10/01/02 – 10/06/02
Legal Assistant Today [via link on AAfPE website]	10/01/02

LexisNexis' *Keyword* search feature. Searches were conducted for each state with the search terms *paralegal OR legal assistant* entered in the *Keyword* blank. I chose search terms based on the research questions and utilized the Boolean operator *OR* pursuant to the instructions provided by LexisNexis, Bast and Hawkins (2002), and Neuendorf (2002).

Once the search terms were entered, LexisNexis created a listing of matching documents. A brief narrative for each item in the generated list was also supplied. I reviewed the generated matches by reading the descriptions for the items. I retrieved the full text of all documents that related to the research questions. I then skimmed the contents of the document by using the *Find (on This Page)* feature and entering the search terms *paralegal* and *legal assistant*, one at a time. If the on-line document directly answered the research questions, I printed a copy of the document and placed it in a file folder labeled with the corresponding state name.

I repeated the process to conduct the search of judicial materials. By employing the *Basic Legal Research* feature of LexisNexis, I opened a section entitled, *State Case Law*, which revealed a screen listing the 50 states. According to Bast and Hawkins (2002), almost every high court decision from 1893 to the present is available on-line. Availability varies by state, but “generally you can expect to find the best coverage at the highest state court level [state supreme court], with scope and coverage decreasing as you move down the judicial court system” (p. 321). By individually clicking on the name of each state, I generated a user-framed query of each state's recorded court decisions by means of LexisNexis' *Keyword* search feature. The search of judicial materials and

selection of documents was conducted in an identical manner to that described for the generation of legislative materials.

Secondary Sources

According to Long (2003), secondary legal resources are useful for locating primary sources and for finding materials about the law or a topic. Secondary sources include on-line legal and professional websites (Long). Bast and Hawkins (2002) contended that Internet-based legal resources offer the most current information and often provide information not available in other formats. Babbie (1998) advised that sampling may occur at any of several levels from contexts relevant to the research inquiries. The investigator must use his judgment in making criteria decisions about data collection (Babbie). Based on the nature of the research questions and the recommendations of Long and Bast and Hawkins, I selectively collected data from bar associations and paralegal professional organizations via information available on their websites.

State bar associations. I conducted a search of each state's bar association website because, as noted by Bast and Hawkins (2002), state bar associations are a good source of state-specific articles. To locate the name and web address of each bar association, I used FindLaw, <http://www.findlaw.com>, a legal web directory with "thousands of links arranged . . . by categories" (Bast & Hawkins, p. 305). Long (2003) described FindLaw as the best resource for up-to-date legal secondary materials and information on website addresses.

Web links to state bar associations are located in the *Legal Organizations* section under *Legal Professionals* of the website. By clicking on *State Bars*, a screen listing the 50 states was generated. I then clicked on the name of each state, which generated a

register of professional organizations, including the state's bar association. I visited the website of each state's bar association. I recorded the name of the bar association, its mailing address, phone number, fax number, and web address for purposes of inclusion in the state-by-state directory generated by this study.

In addition, I searched the bar association websites using the *Search* feature provided. I entered *paralegal* and *legal assistant*, individually, as search terms or used the Boolean operator "or" for the websites that supported such queries. Search results provided abstracts of full-text articles. The abstracts were reviewed for relevancy to the research questions. For each abstract germane to the study, I accessed the full text of the document and read it for relevancy. As described by Miles and Huberman (1994), data collection is an "inescapably *selective* process" (p. 55). I selected documents based on their applicability and placed them in individual states' file folders.

Several websites offered no search feature. In those instances, I explored the categories on the home page and viewed their contents. Again, documents relevant to the research inquiries were selected and copies placed in the corresponding file folders. Also, if the state bar website made mention of an independent paralegal organization, not affiliated with either NALA or NFPA, I made note of its name and address for inclusion in the directory developed as the final product of the study.

American Bar Association. In the foreword to G. Burgess Allison's (1995) book, *The Lawyer's Guide to the Internet*, Roberta Cooper Ramo, president of the American Bar Association at the time of publication, stated that "today's lawyer requires an understanding of the fact that space on earth has been reduced to the distance between the computer on your desk or lap [and] to the phone jack" (p. xi). Accordingly, Long (2003)

declared the American Bar Association (ABA) website, <http://www.abanet.org>, to be an invaluable research tool that features up-to-date information on the following:

- Membership information
- Publications of the ABA
- Continuing Legal Education issues
- The *ABA Journal*
- Links to other law-related sites
- Information about the legal community
- Public information about the legal profession
- Specialty sections and news about upcoming events
- Paralegal information. (p. 84)

I searched the ABA website by selecting the *Search* element “all entities” and utilizing the Boolean operator *AND* with the terms *paralegal* and *definition*. This query resulted in 216 matches. For each item generated, I skimmed the abstract for relevance to the research questions and read the full text of all materials related to queries under study. All applicable documents were printed and placed in corresponding state file folders. Then I performed the search using the Boolean operator *AND* with the terms *legal assistant* and *definition*. This search generated 128 items. Searches were also performed using the terms *paralegal AND licens** (240 matches) and *paralegal AND certificat** (212 matches), replicating the document selection process as described above. The symbol “*” represented a universal or “wildcard” character used to replace letters at the end of a word or to extend a word into any of its forms (Bast & Hawkins, 2002).

Paralegal professional organizations. As discussed in Chapter II, there are two national paralegal professional associations, National Association of Legal Assistants (NALA) and National Federation of Paralegal Associations (NFPA), and one professional organization for paralegal educators, The American Association for Paralegal Education (AAfPE). As noted by Long (2003), paralegal organizations exist on

both the national and state level. Moreover, professional organizations' websites maintain links to paralegal publications and journals and supply further research links (Long).

Long (2003) reported that the NALA website, <http://www.nala.org>, provided valuable newsworthy information regarding the paralegal profession. I reviewed documents contained in sections entitled: *Certification, Information & Articles*, and *The Profession* located on the home page of NALA. I printed copies of all documents relevant to the study. In addition, I utilized the website's *Search* feature located under *Site Map* and performed searches for each of: *paralegal definition* (14 matches), *legal assistant definition* (14 matches), *licensure* (7 matches), and *certification* (58 matches). Again, documents were screened and selected for relevancy.

I next selected *Membership* from the categories on the website and clicked on *Affiliated Associations*. In this manner I was able to generate a partial listing of the 50 states' affiliated NALA organizations. Because NALA cautioned that the listing was incomplete, I contacted them by phone and requested a mailing of the supplemental list, dated July 3, 2002.

I performed an analogous search of the NFPA website, <http://www.paralegals.org> (50 matches), and the AAFPE website, <http://www.aafpe.org> (58 matches). Abstracts of the matches were screened for relevancy and all appropriate full-text documents were acquired. As noted by Long (2003), the NFPA website provided press releases, current legal news, legal research sources, a directory of paralegal publications, and current professional development activities. In addition, I was able to generate a

listing of NFPA's state and local affiliates by clicking on *Membership* and then selecting *NFPA Member Associations* from the categories presented on its home page.

I visited each NALA and NFPA affiliate website, if any, where I searched for relevant data. From the websites and the supplemental listing provided by NALA, I acquired the exact names, addresses, phone and fax numbers, and email addresses, if any, of the state and local affiliates for both national professional organizations. The information was gathered for purposes of inclusion in the directory generated by the study.

Other secondary sources. *Legal Assistant Today* (2002) advertises itself as being “the only independent legal news resource covering the paralegal profession” (p. 1). The AAFPE (2002) provides a link to *Legal Assistant Today*'s searchable archives on its website and lists it as an important resource. Based on AAFPE's confidence in *Legal Assistant Today* as a valuable resource and the fact that it is a subsidiary publication of West Publishing Company, described by Bast and Hawkins (2002) as one of two legal publishing giants, I chose to include it as a secondary source. Using the web link provided by AAFPE, I searched the index to archived articles, 1983 through present. I then obtained a copy of any news article relating to the research questions.

Data Analysis and Coding

Initial Analysis

After gathering content-appropriate documents for each state, I began analysis by examining the data within *states* across the two variables identified in the research questions, *definition* and *mandate attempted*. Tesch (1990) described the basic procedure for content-analytic studies as sorting units into categories. Classification of data into

categories is commonly referred to as *coding* (Cartwright, 1966). According to Tesch, in qualitative content-analytic studies, not only does coding reduce large amounts of data into smaller analytic units, but it also allows the researcher to summarize the content of the communications for purposes of answering the research inquiries.

Sepstrup (1981) suggested using themes discovered in the literature review as the initial classifications or categories in coding data. Some classifications can be decided quite objectively and they should enhance the purpose of the research (Sepstrup). Based on the literature review and Sepstrup's recommendations, my initial categories for answering the research questions were:

Q1. (*definition*) by *statute, case law, or bar association*.

Q2. (*mandate attempted*) *yes or no*.

My task was to code the state's definition of paralegal into one of three classifications and to affirm or deny that mandatory paralegal licensure or certification had been attempted within that state. Q1 coding was intuitive and straightforward. The criterion for coding Q2 *yes* was finding evidence within the documents that mandatory paralegal certification or licensure had been formally proposed by a judicial or legislative body. If no such evidence was found, Q2 was coded *no*. Accordingly to Berelson (1952), qualitative content analysis may be based on the absence or presence of particular content.

I began the analysis by rereading the documents generated during data collection, proceeding alphabetically state by state. I followed Neuendorf's (2002) prescription and used content analysis as a summarizing technique rather than to recount all details within the documents to construct the state synopses. Primary source materials, legislation and

judicatures, were examined first. Next, I reviewed documents from secondary sources in the following order: bar associations, paralegal professional organizations, and others. I coded the data relative to the research questions in a computer-generated Microsoft Word file for each state. The Word files ultimately became the summary of findings per state (see Appendix). Each summation included information about the bar association and paralegal professional organizations. When available, references to statutes regulating licensing of new occupations were also provided.

I quickly discovered what Cartwright (1966) had noted, that “the most logically construed and . . . elegantly designed scheme of analysis will not produce objective results if it does not . . . ‘fit’ the material being analyzed” (p. 438). I encountered difficulty in getting my “*a priori* analysis scheme to fit the verbal materials” (p. 439). I determined it necessary to follow the suggestion of Cartwright to systematically modify the inquiry. As noted by Holsti (1969), the researcher must use his judgment in making decisions about the classification system. One’s data is an important asset in developing reliable and valid categories (Holsti).

Modifications

I found that Q1 *definitions* needed an additional category of *none*. Carney (1972) suggested that categories be altered to deal with the “differences which are inevitable between a generalized statement of any problem and a specific instance of a problem” (p. 172). Thus, I changed the classification of *case law* to *court* in order to accommodate the instances of both *court rules* and *court rulings*. Additionally, I discovered that the term *nonlawyer* or *non-lawyer* was sometimes used in statutes and court rules to refer to those

acting in paralegal capacities. As described by Berelson (1952), there was something of a progression in the design of my content-analytic study.

Once again I utilized LexisNexis to search, by state, statutes and court rules using the term *nonlawyer OR non-lawyer* entered in the *Keyword* blank. This search did not yield any additional *definition* information; however, it did provide information as to how, in each state, paralegals' activities are regulated by their supervising attorneys. As discussed in Chapter II, a portion of the ABA's Model Code is termed *Model Rules of Professional Conduct* (Model Rules). Model Rule 5.3 addresses attorneys' (*professionals'*) responsibilities regarding nonlawyer assistants (*paraprofessionals*). Inclusion of this information in the state summarizations significantly enriched the study in that it reinforced the theme of the *professional* regulating the *paraprofessional*. States' comparable rules on *attorneys' responsibilities regarding nonlawyer assistants*, which describe how the *paraprofessional* acts for the lawyer in rendition of the lawyer's *professional* services, were thus included.

Ultimately, I resumed data analysis and coding using the following revised coding scheme:

Q1. (*definition*) by *statute, court, bar association, or none*.

Q2. (*mandate attempted*) *yes or no*.

When Q1 was coded *none*, I contacted a representative of the state bar association to confirm. Contacts were made via email. When Q2 was coded *yes*, the following was given: form of the mandate attempted (*licensure or certification*), by whom it was attempted, and the status of the action.

As previously stated, materials obtained from primary sources were examined first, followed by documents from secondary sources. I worked back and forth between sources for purposes of triangulation, utilizing secondary sources as finding tools and as supplementary materials for inclusion in the *Discussion* section of the state reports. The various data sources formed the triangulation to check for consistency of findings. The presentation of findings is discussed in Chapter IV.

Validity and Reliability

Berelson (1952) pointed out that the problem of validity is no problem at all in many content analyses. In his opinion, in most subject-matter analyses, the instruments measure what they are intended to measure. Andr n (1981) related validity to relevancy. In other words, do the analyses “provide a more or less precise description of the content in terms meaningful for the problem at hand” (Berelson, 1952, p. 188)? As stated by Holsti (1969), when the data serves as a direct answer to the research questions, rather than as an indicator from which characteristics of the sources or audiences are to be inferred, validity is not a dilemma. This argument applied to my study.

By definition, a content-analytic approach must be objective and systematic (Berelson, 1952; Holsti, 1969). I selected documents and analyzed them in the systematic manner described. I attempted to minimize subjectivity by inclusion of verbatim data, thus increasing the reliability of the study. Weber (1990) and Krippendorff (1980) used the term *reproducibility* to describe the extent to which the content of the final product would be the same if the same text were analyzed by a different researcher. Babbie (1998) suggested that the “concreteness of the materials studied in content analysis strengthens the likelihood of reliability” (p. 319). The

underlying theme for each of these characterizations of reliability is that, regardless of who does the data analysis, the same results should be secured under similar conditions (Berelson, 1952). I attempted to describe, in detail, the procedures used and decisions made so that replication of the process might be possible.

Summary

This study utilized a qualitative content-analytic approach to construct a resource that summarizes paralegal definition and regulation within each state. Marshall and Rossman (1995) portrayed qualitative research methods as important modes of inquiry to identify variables for subsequent explanatory or predictive research. Berelson (1952), Gall et al. (1996), and Holsti (1969) described content analysis as a multipurpose methodology used for the objective and systematic description of the content of communications. Babbie (1998) suggested that the concreteness of the materials studied in the content-analytic study strengthened its reliability.

According to Berelson (1952), qualitative content analysis is especially called for where theory verification is not the primary goal. Miles and Huberman (1984, 1994) asserted that while qualitative research is uniquely suited to uncovering and exploring new avenues, its greatest strength is in its capacity to describe in detail a phenomenon under study. The phenomenon studied was paralegal definition and regulation within each of the 50 states utilizing on-line legal documentary resources.

Chapter IV

Findings of the Study

The purpose of this study was to construct a comprehensive summary describing paralegal definition and regulation on a state-by-state basis. Research findings reflect data gathered and analyzed by means of a content-analytic approach. The sources for the data are discussed in Chapter III. The report generated by the analysis is located in the Appendix and primary findings are contained therein. Some similarities and differences among states across the variables, *paralegal definition* and *mandate attempted*, are described in this chapter. In addition, pertinent supplemental information is presented.

Paralegal Definition

The first research question presented in this study was, “Within each state, how are paralegals defined?” Coding choices for generated data were *definition by statute*, *court*, *bar association*, or *none*. The coding *court* included both *court rule* and *court ruling*. Table 2 depicts the results of the coding. The text of each state’s definition and the corresponding citations are provided in the state-by-state reports located in the Appendix.

Table 2

States Categorized by Type of Definition

Statute	Court		Bar Association*	None
	Rule	Ruling		
Alabama	Florida	Arizona	Colorado	Alaska
California	Iowa	Delaware	Connecticut	Arkansas
Illinois	Kentucky	Maryland	Georgia	Hawaii
Indiana	Nebraska	New Jersey	Kansas	Idaho
Maine	New Hampshire	Texas	Michigan	Louisiana
Montana	New Mexico	Washington	Missouri	Massachusetts
South Dakota	North Dakota		Nevada	Minnesota
	Rhode Island		New York	Mississippi
	Utah		North Carolina	Oregon
			Ohio	Pennsylvania
			Oklahoma	South Carolina
			Vermont	Tennessee
			Virginia	Wyoming
			West Virginia	
			Wisconsin	

Note. Data were collected during the period of 05/01/02 through 10/01/02.

*The results of this study indicate that in other states bar associations may have defined *paralegal*, but statutory or court definitions now supercede the bar definitions.

States Defining Paralegal by Statute

According to the results of this study, seven states currently define *paralegal* by *statute*. The states and citations are shown in Table 3. The statutory definitions for California, Illinois, Indiana, Maine, Montana, and South Dakota each include language describing a paralegal as qualified *by education, training, and/or work experience*. The assertion or implication that the paralegal works *under the direction and/or supervision of an attorney* is common among most of the definitions. Alabama's statutory definition differs in that *paralegal* is defined within the context of *legal service providers*.

In California, legislation regulating paralegals is contained within the California Business and Professional Code. The statute was enacted in 2000. In addition to the definition, the code addresses the scope and limitations of lawful paralegal activities and sets forth qualification and certification requirements in a subsequent section (see Appendix). Therese A. Cannon (2002), Educational Consultant to the ABA Standing Committee on Legal Assistants, advised that although the requirements of the new code dictate the qualifications and functions of paralegals in California, they do not mandate registration or certification of paralegals with any agency. The California code does, however, contain a mandatory continuing education requirement.

California has also created an occupation of non-lawyers, known as *legal document assistants*. California Business and Professional Code Section 6400 (Deering 2002) defines a *legal document assistant* as:

Any person who . . . provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority. (§ 6400(c)(1))

Table 3

States Defining Paralegal by Statute

State	Statute
Alabama	Ala. Code § 6-5-572(2) (2002)
California	Cal. Bus. & Prof. Code § 6450(a) (Deering 2002)
Illinois	5 Ill. Comp. Stat. 70/1.35 (2002)
Indiana	Ind. Code Ann. § 1-1-4-6(a) (Michie 2002)
Maine	Me. Rev. Stat. Ann. tit. 4, § 921.1 (West 2001)
Montana	Mont. Code Ann. § 37-60-101 (2002)
South Dakota	S.D. Codified Laws § 16-18-34 (Michie 2002)

Note. Data were collected during the period of 05/01/02 through 10/01/02.

In Maine, in addition to the statutory definition, a subsequent statute, Maine Revised Statutes Annotated Title 4, Section 922 (West 2001), places a restriction on the use of the title *paralegal* or *legal assistant* and assigns a penalty in subsection 2. “A person may not use the title ‘paralegal’ or ‘legal assistant’ unless the person meets the definition in section 921, subsection 1” (§ 922.1). The civil fine consists of a violation and forfeiture of not more than \$1000 (§ 922.2).

The South Dakota code section that defines *legal assistant* also states, “This rule shall apply to all unlicensed persons employed by a licensed attorney who are represented to the public or clients as possessing training or education which qualifies them to assist in the handling of legal matters or document preparation for the client” (§ 16-18-34).

Prior to 1997, the contents of the statute were contained within the Supreme Court Rules.

The current code also regulates who may not serve as a legal assistant:

The following persons shall not serve as a legal assistant in the State of South Dakota except upon application to and approval of the Supreme Court.

- (1) Any person convicted of a felony.
- (2) Any person disbarred or suspended from the practice of law in any jurisdiction.
- (3) Any person placed on disability inactive status under § 16-19-48 or 16-19-92.
- (4) Any person placed on temporary suspension from the practice of law under § 16-19-35.1. (§ 16-18-34.4)

Bemiss (2002b) reported that the South Dakota Paralegal Association (SDPA) intends to approach the State Bar of South Dakota in the latter months of 2002 to request that the words *legal assistant* be replaced with *paralegal* in the statutory definition. According to Bemiss, SDPA’s concern was that the public does not understand the difference between a secretary providing legal assistance in the law office and the tasks that are reserved for paralegals.

Section 5 of the Illinois Compiled Statutes 70/1.35 (2002), setting forth the definition of *paralegal*, became effective January 1, 1996. Prior to the enactment of the statutory definition the Illinois State Bar Association (1986) commented on the state's lack of paralegal definition and stated:

In Illinois there has, at present, been no effort made to define precisely what is a "paralegal". There are no standards prescribed, no testing requirements, no certification procedure and no guarantees, either to the public or to the profession, that any individual categorized as a "paralegal" has met certain minimum standards prescribed by either the Court or the State. (Advisory Op. No. 86-1, ¶ 6)

Indiana's statutory definition of *paralegal* became effective in 1993 (Ind. Code Ann. § 1-1-4-6(a), Michie 2002). The legislation was initiated when the Indiana Supreme Court established a committee to promulgate rules on the utilization of paralegals (Shimko-Herman, 1991).

The State of Montana set forth its definition of *paralegal* or *legal assistant* under Title 37 – *Professions and Occupations* when it enacted legislation to license private investigators and parole officers because some paralegals were functioning in this capacity (Shimko-Herman, 1991). Montana Code Annotated Section 37-60-105(4)(b) (2002) specifically exempts paralegals from private investigator licensure requirements provided they are employed by a law office, governmental agency, or other entity.

States Defining Paralegal by Court

As previously discussed, definition by *court* includes the instances of *court rule* and *court ruling*. As defined in *Definition of Terms* in Chapter I, *court rule* consists of regulations with the force of law governing practice and procedure in the various courts. *Court ruling* is the outcome of a court's decision on some point of law. In general, *rule* refers to a legal proposition and *ruling* states a conclusion (Garner, 1999). Both connote

a decision or adjudication by a judicial body (Garner). Tables 4 and 5 identify, respectively, the 15 states defining *paralegal* by *court rule* or *court ruling* and include analogous rule or ruling citations.

Court rule. According to Bast and Hawkins (2002), each state possesses particular procedures for ratifying court rules. In most jurisdictions, the judicial branch promulgates court rules under the statutory authority given to it by the legislative branch. Table 4 includes illustrations of *court rule definition* by regulatory rules, professional conduct rules, Supreme Court rules, and rules of professional responsibility.

In Florida, Bar Regulation Rules define *paralegal* and, furthermore, advise that:

It shall constitute the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules to offer or provide legal services directly to the public or for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules to use the title paralegal, legal assistant, or other similar term in providing legal services or legal forms preparation services directly to the public. (R. 10-2.1)

Pareti (2002) reported that Florida's rule amendment, approved in April 2002, resulted from "the number of rising complaints of the unauthorized practice of law involving paralegals" (p. 23). Paralegal associations joined forces to request the Court to "regulate paralegals and set up standards for those entering the legal assistant profession" (Tremore, 2002, p. 20).

In Iowa, Nebraska, and North Dakota, ethical rules of professional responsibility and professional conduct provide the bases for the definitions. Nebraska's definition utilizes the terminology *support person*. In Kentucky, New Hampshire, Rhode Island, and Utah, *paralegal* is defined by Supreme Court administrative rules.

Table 4

States Defining Paralegal by Court Rule

State	Rule
Florida	Fla. Bar Reg. R. 10-2.1(b)
Iowa	Iowa Code Prof. Resp. EC 3-6(4)
Kentucky	Ky. Sup. Ct. R. 3.700
Nebraska	Neb. Code Prof. Resp. DR 5-109 (A)
New Hampshire	N.H. Sup. Ct. R. 35.5.3 (2) (C)
New Mexico	N.M. R. Gov. Legal Asst. Ser. R. 20-102A
North Dakota	N.D. R. Prof. Conduct <i>Scope</i>
Rhode Island	R.I. Sup. Ct. Art. V, R. 5.5
Utah	Utah Code Jud. Admin. R. III (V) (1)

Note. Data were collected during the period of 05/01/02 through 10/01/02.

Table 5

States Defining Paralegal by Court Ruling

State	Ruling Citation
Arizona	<i>Continental Townhouses E. Unit One Ass'n v. Brockbank</i> , 733 P.2d 1120, 1128 (Ariz. Ct. App. 1986).
Delaware	<i>McMackin v. McMackin</i> , 651 A.2d 778, 779 (Del. Fam. Ct. 1993).
Maryland	<i>Attorney Grievance Comm'n v. Hallmon</i> , 343 Md. 390, 397, 681, A.2d 510, 514 (1996).
New Jersey	<i>In re Opinion No. 24</i> , 128 N.J. 114, 125, 607 A.2d 962 (1992).
Texas	<i>Gill Sav. Ass'n v. International Supply</i> , 759 S. W.2d 697, 703 (Tex. App. 1988).
Washington	<i>Absher Construction Co. v. Kent School District</i> , 917 P.2d 1086, 1088 (Wash. App. 1995).

Note. Data were collected during the period of 05/01/02 through 10/01/02.

In 1979, Kentucky became the first state to have implemented such a rule by its highest court (NALA, 1999c). Now revised, Supreme Court Rule 3.700 advises that the rapid growth in the employment of paralegals increases the necessity of establishing guidelines for the utilization of paralegals by the legal community. It further states that the Bar must be committed to the goal of providing legal services to the public at an affordable price.

Rule 20-102 of the New Mexico Rules Governing Legal Assistant Services now contains comparable language. The rules, first effective in April 1993, have sustained numerous amendments. Section B. of Rule 20-102 defines the *practice of law* and purports to advise legal assistants of what actions to avoid.

In Utah, on the other hand, court rules inform legal assistants of permissive actions. The rules promote affiliate membership with the Utah State Bar and allow qualified individuals to become members of the State Bar's Legal Assistant Division. Although many other bar associations have legal assistant sections or allow for affiliate membership, findings indicate that Utah is the only state to have a court rule promulgating such association.

Court ruling. States defining *paralegal* by *court ruling* are shown in Table 5. Various levels of courts supply states' definitions. In both Maryland and New Jersey, the Supreme Court defined the term *paralegal*. In Arizona, Texas, and Washington, intermediate appellate courts adjudicated the denotation. Delaware's specialty court, the Delaware Family Court, provided its definition. In every circumstance of *court ruling*, except Texas, the Court utilized the ABA language in its opinion. In Maryland, the Court not only set forth a definition but also advised paralegals what they might not do. The

Court's decision made reference to the importance given by the ABA to attorney supervision of the *paraprofessional*:

Law clerks and paralegals perform a variety of services for attorneys but they may not give legal advice, accept cases, set fees, appear in court, plan strategy, make legal decisions, or chart the direction of a case. . . . The American Bar Association similarly stresses the importance of attorney supervision of paraprofessionals in its definition of a legal assistant. (*Attorney Grievance Comm'n v. Hallmon*, 343 Md. 390, 681 A.2d 510, 514, 1996)

New Jersey's Supreme Court opinion reportedly resulted from a growing concern that independent paralegals were functioning outside the supervision of attorneys and that such actions constituted the *unauthorized practice of law* (*In re Opinion No. 24*, 128 N.J. 114, 607 A.2d 962, 1992). The Court opined that, with regard to their obligations, there is no distinction between an independent paralegal and a paralegal employed by a law firm. The Court thus became involved in attempting to mandate paralegal licensure (*In re Opinion No. 24*, 1992) (see Appendix).

States Defining Paralegal by Bar Association Action

The 15 states in which *bar associations* define *paralegals* and the corresponding citations are shown in Table 6. Although there are other states in which bar associations have provided a definition of *paralegal*, the association definitions have subsequently been superseded by court or legislative action. Georgia's definition differs in that it results from a State Disciplinary Board ruling. Another divergence of Georgia's definition is that it includes the expression *paraprofessional* (see Appendix). Findings indicate that *bar association* definitions are often contained within bar-established guidelines. Frequently the guidelines were instituted in conjunction with the bar's legal assistant committee and convey lists of tasks that a paralegal may perform. As

Table 6

States in which Bar Associations Define Paralegal

State	Source
Colorado	Colorado Paralegals-Proposed Guidelines to the Next Century and Beyond: Part I, 1996, p. 63
Connecticut	Guidelines for Lawyers Who Employ or Retain Legal Assistants and Guidelines for Legal Assistants, 2002, p. 1
Georgia	State Bar of Georgia State Disciplinary Board, Advisory Op. No. 21, 1977, p. 2
Kansas	Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas, 1998, p.2
Michigan	Bylaws of the State Bar of Michigan, Art. 1, § 6, 1993
Missouri	Missouri Bar Guidelines for Practicing with Paralegals, 1997, p. 5
Nevada	ByLaws of the Legal Assistants Division of the State Bar of Nevada, § 3, 2000
New York	Guidelines for the Utilization by Lawyers of the Services of Legal Assistants, n.d., Preliminary Statement, ¶ 1
North Carolina	Guidelines for Use of Non-Lawyers in Rendering Legal Services, 1998, p. 2
Ohio	Legal Assistant Membership Application, 2002, p. 1
Oklahoma	Minimum Qualification Standards for Legal Assistants/ Paralegals, 2002, p. 1
Vermont	Constitution of the Vermont Bar Association, 2000, p. 2
Virginia	Resolution of Standing Committee on the Unauthorized Practice of Law, March 8, 1996
West Virginia	Legal Assistants Committee Meeting Minutes, May 6, 1999, ¶ 3
Wisconsin	Paralegal Practice Task Force Meeting Minutes, November 6, 1996, ¶ 4

Note. Data were collected during the period of 05/01/02 through 10/01/02.

noted by the Connecticut Bar Association (2002), the task lists are generally *illustrative* not *exhaustive*. The State Bar of Wisconsin, in conjunction with its Paralegal Practice Task Force, is currently formulating a proposal for court rule revisions that encompasses education guidelines and an extensive paralegal definition (Paralegal Association of Wisconsin, 2002; State Bar of Wisconsin, 2000).

States with No Formal Definition

According to the results of this study, in 13 states there are currently no formal definitions of *paralegal*. The states are identified in the fourth column of Table 2. Oregon almost acquired a definition of *paralegal by bar association*; but, because the state's two paralegal associations could not agree on key provisions, the Board of Governors of the Oregon State Bar declined adoption of a definition (Levy, 2001).

Although the Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee (2002) stated that Pennsylvania had no formal or statutory definition of *paralegal/legal assistant*, it acknowledged that the concept of *paralegal* could be expressed through the combination of various definitions promulgated by others. The Committee thereupon set forth a description of the concept that substantially defined a paralegal but, within the same document, denied the existence of a definition (see Appendix). Moreover, the Pennsylvania legislature addressed the notion of *paralegal* when it enacted law that forbade a paralegal or legal assistant from holding "himself out to the public as being entitled to practice law," but did not define who or what a paralegal is within the statute (42 Pa. Cons. Stat. § 2524 (A), 2002). According to the Pennsylvania Bar's UPL Committee (2002), Section 2524 legislation was passed in response to widespread concern that individuals were using the terms *paralegal* and *legal*

assistant as occupational titles in such a manner as to lead potential customers to believe that they were authorized to offer legal services.

Although there is no official definition of *paralegal* in South Carolina, the Supreme Court has decided a number of cases involving paralegals. The rulings, however, fail to define the term. In the case of *In re Easler*, 275 S.C. 400, 272 S.E.2d 32 (1980), the Court stated:

Paralegals are routinely employed by licensed attorneys to assist in the preparation of legal documents such as deeds and mortgages. The activities of a paralegal do not constitute the practice of law as long as they are limited to work of a preparatory nature, such as legal research, investigation, or the composition of legal documents, which enable the licensed attorney-employer to carry a given matter to a conclusion through his own examination. (p. 401)

In *John Doe v. Condon*, 341 S.C. 22, 532 S.E.2d 879 (2000), the Court held that:

While the important support functions of paralegals have increased through the years, the *Easler* guidelines stand the test of time. As envisioned in *Easler*, the paralegal plays a supporting role to the supervising attorney. . . . It is well settled that a paralegal may not give legal advice, consult, offer legal explanations, or make legal recommendations. (p. 26)

States with New Definitions Pending

Data analysis revealed that new definitions are awaiting approval in Arizona, Ohio, Virginia, and Wisconsin. In South Carolina, paralegal definition is under consideration. The South Carolina Alliance of Legal Assistant Associations is developing guidelines for a legal assistant division of the Bar (Ny, 2001). Lisa Burgess, spokesperson-elect for the Alliance and employee of the Bar, (personal communication, September 3, 2002) advised that in all probability a definition would be contained within the guidelines. Details are not available to the public.

In Ohio, the revision is a diminution and, if approved, *bar association* would remain the entity defining *paralegal*. The modification to the existing definition was initiated by Bar's Paralegal/Legal Assistant Committee (2002b). In Virginia and Wisconsin, approval of the new definitions would change the states' classifications to *defined by court*. In both states, the bar associations are recommending court rule changes that also encompass extensive descriptions of paralegal activities.

If the definition pending in Arizona were approved, the state's classification would remain *court* but would become *rule* rather than *ruling*. Even though the Court of Appeals utilized the ABA definition in its ruling, the State Bar of Arizona Consumer Protection Committee (CPC) has recommended redefining *paralegal* by amending the Supreme Court Rules (Ny, 2001; State Bar of Arizona CPC, 2001). The Bar's *Petition to Amend*, filed in April 2002, includes the following:

A "legal assistant/paralegal" is a person qualified by education and training who performs substantive legal work, which requires a sufficient knowledge and expertise of 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. (p. 2)

The Petition is open for comment until October 1, 2002, with no date set for ruling (Arizona Supreme Court, 2002). The proposed rule changes are due, in part, to issues involving the *unauthorized practice of law* (State Bar of Arizona CPC, 2001).

The proposed new definition for Virginia paralegals also falls within the purview of *unauthorized practice of law*. The Virginia State Bar (VSB) Standing Committee on the Unauthorized Practice of Law (UPL) has proposed a new court rule to be added to the UPL rules (Virginia State Bar, 2002). The new rule not only defines *paralegal* or *legal assistant* but also purports to clarify and delineate what services paralegals can and

cannot perform (Virginia State Bar). If the VSB Council approves the proposed Rule 10, the Bar will petition the Virginia Supreme Court for approval. If approved by the Supreme Court, the rule becomes part of Virginia Supreme Court Rules. The VSB Council is expected to take action in late 2002 (Virginia State Bar). As reported by the Bar, the proposed definition contained within Rule 10 states:

UNAUTHORIZED PRACTICE OF LAW RULE 10. LEGAL ASSISTANTS.

UPR 10-101: Definitions.

(A) "Legal Assistant" refers to a non-lawyer, who by experience or special training has knowledge of legal concepts, working for and under the supervision of a lawyer who ultimately assumes professional responsibility for the final work product.

(B) "Paralegal" is a term equivalent to "legal assistant" for the purposes of this rule.

According to Daniel Rossmiller, Public Affairs Administrator for the State Bar of Wisconsin, (personal communication, September 27, 2002) the Bar Paralegal Practice Task Force (Task Force) has developed a new recommendation that essentially restates the bar definition now utilized. The proposed definition includes an extensive section entitled *Preamble: A Paralegal's Responsibility* (State Bar of Wisconsin Paralegal Practice Task Force, 2002). According to Rossmiller, the Task Force's next agenda is to compile a complete set of rules that encompass the definition and the proposed preamble. Once ratified by the Bar, the rules will be submitted to the Court for authorization. As in Arizona and Virginia, approval by the Supreme Court is the final step. The new rules, if adopted by the Court, become part of the Wisconsin Rules of Professional Conduct. The Wisconsin proposal remains in the developmental phase (Rossmiller).

Mandate Attempted

The second research question presented in this study was, “Within each state, has mandatory paralegal licensure or certification been attempted? If so, was the form of the mandate attempt *licensure* or *certification*, by whom was it attempted, and what is the status of the action?”

Coding choices for generated data were *yes* or *no*. As discussed in Chapter III, the criterion for coding Q2 *yes* was finding evidence within documents that a judicial or legislative body had formally proposed mandatory paralegal certification or licensure. If no such evidence was found, Q2 was coded *no*. As indicated in Chapter III, when Q2 was coded *yes*, the following information was provided in the state reports: form of the mandate attempted (*licensure* or *certification*), by whom it was attempted, and the status of the action. Table 7 displays the four states meeting the Q2 *yes*-coding criterion.

In Arizona, although neither a judicial nor legislative body has formally proposed mandatory licensure or certification, the matter is before the Supreme Court on a *Petition to Amend Supreme Court Rule 31 and to Add Rules 32, 76-80*, filed in April 2002 (State Bar of Arizona Consumer Protection Committee, n.d.). I, therefore, chose to include Arizona in the *yes*-categorization because of the petition pending before the Court.

Data analysis revealed that several other states have considered or proposed mandatory licensure or certification for *independent* paralegals only. For example, in Oregon, Senate Bill 1068 (1991) proposed regulation of *independent* legal technicians delivering legal services to the public. The Bill defined *legal service technician* as “any person who is not an active member of the Oregon State Bar and gives legal assistance or

Table 7

States with Mandatory Licensure or Certification Attempts

State	Form	Action Brought By	Status
Arizona	Certification	Bar Association	Pending
Hawaii	Certification	Supreme Court	Postponed
New Jersey	Licensure	Special Committee of Supreme Court	Halted
Washington	Certification	Legislature	Died in Committee

Note. Data were collected during the period of 05/01/02 through 10/01/02.

advice to another for compensation. ‘Legal technician’ does not include any person . . . supervised by an active member of the Oregon State Bar” (Or. S. 1068, 1991, § 1(1)).

The bill died in committee (Or. S. 1068, 1991; Shimko-Herman, 1991).

In Illinois, Senate Bill 2314 (1990) proposed mandatory licensure for *independent* paralegals and Senate Bill 0776 (1991) proposed regulation of the delivery of legal services by *legal technicians*. Neither was ultimately made into law (Shimko-Herman). Minnesota Senate Bill 520 (19-91) attempted to designate a *specialized legal assistant* by creating a specialty license. Amended, it was eventually reduced to a feasibility study (Minn. Sup. Ct. Rep. 940338, 1994; Shimko-Herman, 1991).

According to the results of this study, some states’ paralegal organizations and bar associations have discussed the possibility of proposing mandatory licensure or certification. Such states did not meet the *yes*-coding criterion, nor did those proposing licensure for *independent* paralegals. Many of the organizations’ discussions regarding prospective mandates centered on the issue of *unauthorized practice of law* (UPL). In fact, in Arizona, New Jersey, and Washington, states coded *yes* for Q2, the mandatory regulation proposals also stemmed from concerns related to UPL issues.

In Arizona, the proposal to regulate paralegals was part of a larger package dealing with UPL issues and included four significant additions to Arizona Supreme Court Rule 31. The four additions specified definitions for the *practice of law*, *unauthorized practice of law*, *paralegal or legal assistant*, and *mediator* (State Bar of Arizona CPC, 2001). In 2000, the Bar directed its Consumer Protection Committee (CPC) to propose amendments to the Arizona Supreme Court Rules (Ny, 2001). The

Supreme Court is currently considering establishing a certification process for supervised paralegals because

offenders routinely misuse these titles to misrepresent their authority to give legal advice or prepare legal documents. Consumers simply do not understand that a true paralegal or legal assistant does not run their own business. Legitimate paralegals and legal assistants . . . are those paraprofessionals who work exclusively under the supervision of a lawyer. The only way to prevent misuse of these terms is to establish accurate definitions within a UPL enforcement framework that would penalize misuse. (State Bar of Arizona CPC, n.d., p. 22)

The New Jersey Supreme Court became engaged in mandatory licensure activities in 1989 when its UPL Committee began investigating the appropriateness of nonlawyers delivering legal services to the public (Shimko-Herman, 1991). In 1990, the UPL Committee of the Supreme Court reported that paralegals were functioning outside the supervision of attorneys and that such activity constituted the *unauthorized practice of law* (*In re Opinion No. 24*, 1992). The Court convened a Committee on Paralegal Education and Regulation to “study the practice of paralegals and make recommendations” (*In re Opinion No. 24*, p. 128). After six years, the Committee filed a report recommending mandatory licensure of all paralegals. Subsequently, the Court decided that such action was unnecessary and halted further proceedings (New Jersey Supreme Court Committee on Paralegal Education and Regulation, 1999).

In Washington, House Bill 1975 (1991) proposed regulation of paralegals in the form of mandatory certification and prescribed educational qualifications for applicants. The Bill stated that the purpose of the legislation was to protect the public from unauthorized practice (Wash. H. 1975, 1991). The Bill died upon its referral to the Judiciary Committee (Shimko-Herman, 1991).

According to the Hawaii State Bar Association (HSBA) Task Force on Paralegal Certification (2001), Hawaii's mandatory certification proposal was presented in the form of *court rule* changes. It contained specific qualification requirements, including educational prerequisites. The HSBA Task Force Report (2001) advised that the Supreme Court staff developed the rule revisions in an effort to address attorneys' need for guidance in employing paralegals. In March of 2001, the Bar's Board of Directors declined adoption of the proposal in favor of voluntary paralegal certification (Farmer & Forman, 2001). I. M. Ito, Executive Director of the Bar, (personal communication, August 13, 2002) advised that the Board voted to ask the Supreme Court not to approve the rule changes with respect to paralegals at this time.

Supplemental Findings of Interest

Education Guidelines and Requirements

At least one state has legislated education guidelines or continuing legal education requirements for paralegals. California's Business and Professional Code (Deering 2002) mandates:

All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. . . .

Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law. (§6450(d))

A subsequent code section prescribes very specific education qualification criteria (see Appendix). Proposed court rules in Wisconsin also address educational standards.

However, in Florida, attempts to persuade the Court to amend rules in order to "set up standards for those entering the legal assistant profession" have failed (Tremore, 2002, p. 20).

Data demonstrate that some bar associations have published recommended educational parameters and have sanctioned continuing legal education. In Michigan, education requirements were written into the definition promulgated by the State Bar. Bar guidelines in Oklahoma and Vermont also incorporate stipulations regarding education.

Voluntary State Certification

Analysis of collected documents points to a possible trend toward voluntary state certification for paralegals. Various states offer endorsements that supplement the national certifications of the NALA and NFPA. California, Florida, Louisiana, and Texas are examples of states with such credentialing and Kentucky and Nevada have certification proposals pending.

Rules Relating to Nonlawyer Assistants

Chapter II discusses the *ABA Model Rules of Professional Conduct*, often referred to as the *Model Rules*. The rules consist of an ethical code of conduct for attorneys and are organized under general headings (Miller & Urisko, 1996). Rule 5.3 (see Chapter II) defines the responsibilities of attorneys regarding *nonlawyer assistants*. Paralegals are included in that classification. I found comparable rules regarding *nonlawyer assistants* in all states, except California, Ohio, and Oregon. Most state rules parallel the language of the ABA Rule 5.3. In addition, many states have adopted the *Comment* portion of that rule.

Summary

Paralegals are defined by *statute* in 7 states, *court rule* in 9 states, *court ruling* in 6 states, and *bar association* in 15 states. Thirteen states have no formal definition. No

state has adopted mandatory requirements for paralegals even though formal attempts have been made in four. In three of the four states, the action was proposed as mandatory *certification* rather than *licensure*. In each state, the actions were brought by different entities. Discussions for proposals continue in several states. A mandatory certification proposal remains pending in Arizona and postponed in Hawaii. Although various aspects of the similarities and differences among states across the variables, *paralegal definition* and *mandate attempted* were detailed in this chapter, the results of the study are primarily shown in the Appendix.

Chapter V

Summary, Conclusions, and Recommendations

This chapter presents a summary of the study and the findings. It also contains conclusions, discussion, and recommendations, including implications for future research.

Summary of the Study

In recent years, a new occupational group has surfaced in the United States that provides legal services under the control and direction of attorneys. Because members of this occupation have not been admitted to the practice of law, those functioning in this paraprofessional capacity are commonly referred to as *paralegals*. Promotion by bar associations and paralegal professional organizations has expanded the profession causing some to predict that the utilization of paralegals would alter the nature of the legal profession. Others envisioned that the impact of the emergence and growth of the paralegal occupation would result in a trend toward increased regulation.

As the paralegal profession has emerged, some state entities may have determined that the public interest is best served by governmental regulation through occupational licensing and therefore have attempted to mandate licensure. Paralegal definition and regulation issues warrant careful consideration. Because occupational regulation is a state problem, and at the same time a national issue, measures set forth by various states' legislatures, courts, and bar associations must be identified and studied.

Unlike other occupations, paralegals have generated little research or writing about their occupation. Although most certain to impact legal services, no studies were found regarding paralegal regulation. The issues surrounding regulation are confusing and poorly understood and no central repository of information exists. It is hoped that the

resource generated by this study, which provides a state-by-state guide to paralegal definition and regulation, will be of value to the paralegal profession and its constituents. Therefore, the purpose of this study was to construct a resource that summarized paralegal definition and regulation within each of the 50 states. In view of the considerations given, the following research questions were posed:

Within each state:

1. How are paralegals defined?
2. Has mandatory paralegal licensure or certification been attempted? If so, was the form of the mandate attempt *licensure* or *certification*, by whom was it attempted, and what is the status of the action?

The research design chosen for the study was a qualitative content analysis. Content analysis was employed because it is a multipurpose methodology used for the objective and systematic description of the content of documents where theory verification is not the primary goal. The final product generated by the analysis provides each state's definition of paralegal with its corresponding citation and advises if mandatory paralegal licensure or certification has been attempted within that state.

The primary data source for the study consisted of state legislative and judicial materials. The secondary data source consisted of selected documents published by professional organizations. The database was constructed using on-line legal resources. Data were initially collected utilizing LexisNexis to conduct a state-by-state search of legislative and judicial documents. Secondary data sources included bar associations' and paralegal professional organizations' websites. Data analysis was accomplished by examining the data within *states* across the two variables identified in the research

questions, *definition* and *mandate attempted*. Coding categories were established based on themes found in the literature review and the data generated. The coding scheme was:

Q1. (*definition*) by *statute*, *court*, *bar association*, or *none*.

Q2. (*mandate attempted*) *yes* or *no*.

In Q1 coding, *court* included both *court rule* and *court ruling*. When Q1 was coded *none*, a state bar association representative was contacted for confirmation. When Q2 was coded *yes*, the following additional information was given: form of the mandate attempted (*licensure* or *certification*), by whom it was attempted, and the status of the action. The criterion for coding Q2 *yes* was finding evidence within the documents that mandatory paralegal certification or licensure had been formally proposed by a judicial or legislative body. If no such evidence was found, Q2 was coded *no*.

The data were coded relative to the research questions in computer-generated Microsoft Word files for each state. The Word files ultimately became the summary of findings per state (see Appendix).

Summary of the Findings

Analysis of the data produced the comprehensive state reports that are located in the Appendix and the primary findings are contained therein. Some similarities and differences among states across the variables, *paralegal definition* and *mandate attempted*, are described in Chapter IV. Answers to the research questions may be summarized as follows:

Research Question 1: Within Each State, How Are Paralegals Defined?

Paralegals are defined by *statute* in 7 states, *court rule* in 9 states, *court ruling* in 6 states, and *bar association* in 15 states. Thirteen states have no formal definition.

Research Question 2: Within Each State, Was a Mandate Attempted?

The second research question presented in this study was, “Within each state, has mandatory paralegal licensure or certification been attempted? If so, was the form of the mandate attempt *licensure* or *certification*, by whom was it attempted, and what is the status of the action?” No state has adopted mandatory requirements for paralegals even though formal attempts have been made in four. In three of the four states, the action was proposed as mandatory *certification* rather than *licensure*. In each state, the actions were brought by different entities. Discussions for proposals continue in several states. A mandatory certification proposal remains pending in Arizona and postponed in Hawaii.

Conclusions and Discussion

The term *paralegal* or *legal assistant* is “firmly entrenched in the vocabulary of the legal profession” (Walston-Dunham, 2002, p. 116). While attorneys have embraced the concept of *paralegal* and various state entities have attempted to define it, there is little evidence of uniformity in *form of definition*. In an effort to define *paralegals*, courts have established rules and rulings, legislatures have enacted statutory definitions, and many bar associations have set forth definitions and guidelines. Yet, in some states no effort has been made to define the term and no definitions exist.

Extended use of paralegal services by attorneys, accompanied by pressure from professional organizations, may have created a critical need for this profession’s role and responsibilities to be defined with greater precision. As predicted by Johnstone and Wenglinsky (1985), increased paralegal utilization is altering the nature of legal practice. The American Bar Association (ABA) continues to examine how high-quality services can be provided to all consumers in a manner that makes best use of nonlawyer services

(ABA, 1995, 2002). In one sense, the legal profession is facing a question regarding paralegal services that attorneys addressed for themselves over a century ago – how to ensure that practitioners provide competent services without unnecessarily restricting entry into and thus, competition within, the profession. As discussed in Chapter II, the government has identified a strong public interest in the regulation of most service professions that have developed during the last century (Gross, 1984). The impetus stems from the need to protect the public from those who would act “with less than a necessary degree of competence or integrity” (Walston-Dunham, 2002, p. 130). The profession is charged with the responsibility of developing and administering methods of definition and regulation to insure competent services (Gross).

Questions of competency lead to issues of education and skill assessment.

Although attorneys are universally required to meet minimum educational requirements and demonstrate a basic level of knowledge, paralegals still are not. A few states now recognize the need for established standards by which to measure and monitor paralegal skills, abilities, and educational credentials. One problem in defining and regulating *paralegals* is created by the vast array of backgrounds that currently exists within the occupation. In addition to formally educated paralegals, there are many job-trained or laterally trained individuals (Miller & Urisko, 1996). The wide educational range is reflected in the general nature of most states’ definitions. Nearly all definitions resemble the ABA definition or those of the paralegal professional organizations, including language describing a paralegal as qualified *by education, training, and/or work experience*. The diversity in educational credentials presents a challenge when attempting to define the occupation. Nonetheless, such a task is important. Although

difficult for governing bodies and professional organizations, describing and evaluating the skills and abilities relevant for such an extensive variety of practitioners must be addressed.

The same entities must ultimately decide whether paralegals should be subject to direct regulation by states through licensing or certification requirements. As previously stated, attorneys are regulated by states through licensing procedures; paralegals are not. To date, paralegal certification remains strictly voluntary via national professional organizations and some states' bar associations. No state has adopted mandatory requirements for paralegals even though formal attempts have been made in four states. Informal movements toward occupational licensure and certification have also been unsuccessful. However, discussions for proposals continue in several states and there remains one formal proposition pending in Arizona and one action postponed in Hawaii. The facts outlined so far may lead some to theorize that this profession is beginning to see what the Council of State Governments (1950) described as the progression from voluntary certification to compulsory licensure. The data suggest there is not yet sufficient evidence to support such a claim.

Paralegals may, however, be encountering what Wilensky (1964) termed *name protection in the form of regulation*. Florida Amendments to Rules Regulating the Florida Bar, approved in 2002, advise that:

It shall constitute the unlicensed practice of law for a person who does not . . . meet the definition of paralegal or legal assistant as set forth elsewhere in these rules to use the title paralegal, legal assistant, or other similar term in providing legal services. (R. 10-2.1)

In Maine, Revised Statutes Annotated, Title 4, Section 922 (West 2001) places a restriction on the use of the title *paralegal* or *legal assistant* and assigns a penalty in

subsection 2. “A person may not use the title ‘paralegal’ or ‘legal assistant’ unless the person meets the definition in Section 921, subsection 1” (§ 922.1). According to Rottenberg (1980), name use by statutory permission constitutes a form of state occupational regulation.

Overall, in most states, there has been a general failure to reach consensus on who should be regulated and how. Historically, paralegals have been regulated *indirectly* by attorneys via ethical codes and by state laws prohibiting nonlawyers from practicing. States have enacted or modified legislation regarding the *unauthorized practice of law* (UPL) and have placed limitations on law-related services by nonlawyers. The recent rule amendment in Florida restricting title use of *paralegal* reportedly resulted from an effort to stop the number of rising UPL complaints involving paralegals (Pareti, 2002). As previously noted, in Arizona, Virginia, and Wisconsin, the proposed rule changes are due, in part, to UPL issues (State Bar of Arizona CPC, 2001; Virginia State Bar, 2002; State Bar of Wisconsin Paralegal Practice Task Force, 2002). Goode’s (1969) depiction of the overlapping knowledge between the superordinate and the subordinate may accurately apply to UPL power struggles.

On their face, UPL statutes clearly prohibit all persons except licensed attorneys from practicing law. Such laws have always presented problems for legal practitioners; but, within the last few years, they have begun to directly impact, in particular, paralegals. UPL concerns emerge when lawyers allow nonlawyers to engage in activities that have traditionally been reserved for the professionals. Many of the paralegal definition and regulation issues confronting the legal community are clearly related to UPL matters. What is unclear, however, is whether the UPL concerns result from

attorneys attempting to maintain their position or paralegals attempting to elevate their position within the legal profession.

Theoreticians have developed models that describe the role of the *paraprofessional* as a subordinate to the *professional*. According to Johnstone and Wenglinsky (1985), *paraprofessionals*, by definition, are individuals who perform the same tasks as do *professionals*, but who also perform tasks too rudimentary to be efficiently performed by professionals. *Paraprofessionals* are employed by *professionals* and extend professional services to allow *professionals* to concentrate on more indispensable responsibilities. *Paraprofessionals* have responsibility to clients, but they are still subject to the control of *professionals* who “lay down the limits to the service which can be rendered . . . and determine its kind and quality” (Johnstone & Wenglinsky, 1985; Toren, 1969, p. 145). In law, the privilege to practice belongs to the *professional*, the attorney.

Paralegals are undoubtedly controlled by standards created by the *professionals*, the ABA, and states’ bar associations under various guidelines. Rules in the ABA Model Code, in conjunction with guidelines and formal opinions issued by various bar associations and committees, serve to assist attorneys and courts in defining the role of the *paraprofessional* in the practice of law. ABA Model Rule 5.3 has special significance for both attorneys and paralegals in that it defines the responsibilities of the attorney in relation to nonlawyer assistants. As noted in the *Supplemental Findings of Interest* section in Chapter III, the fact that 47 states were found to have promulgated comparable rules emphasizes the importance of the *professional’s* responsibility to regulate the activities of the *paraprofessional*.

The theory behind the concept is good; the *professional* supervises the *paraprofessional*. The reality is, however, that “even the most conscientious attorney cannot be omnipotent with regard to everything a paralegal does” (Walston-Dunham, 2002, p. 120). There must be an earned degree of trust between the attorney and the paralegal because the lines drawn between *professional* and *paraprofessional* services and those that constitute the *unauthorized practice of law* are not always clearly discernable. Paralegal organizations, bar associations, courts, and legislatures continue to grapple with issues of trust as they attempt to define the lines of demarcation. Regulating and defining *professional* versus *paraprofessional* services remains an unmet challenge.

In answer to the challenge, legislatures in seven states have attempted to define paralegals. The California legislation contains comprehensive language that defines, in detail, the scope and limitations of lawful paralegal activities. However, all other statutory definitions lack such specificity in their exposition. In point of fact, they are overly broad in nature.

There is strong evidence that the judiciary has taken the lead in recognizing the need to define a legitimate role for the nonlawyer in the practice of law. The recent promulgation of comprehensive court rules may represent a trend toward the judiciary defining and determining the boundaries of paraprofessional activities and resulting responsibilities. Nine states currently have *court rule* definitions and comparable measures are pending in others. Among the four states with new definitions awaiting approval, three constitute the *court rule* format and include extensive descriptions of permissible paralegal activities. It appears that courts via *court rule* orders may become the preferred method of paralegal definition.

The judiciary is also actively addressing at least two larger issues within the legal community that directly impact the question of how and to what extent paralegals should be regulated and defined. The issues are the *unauthorized practice of law* (UPL) and the problem of providing quality legal services to the public in a cost-effective manner. In Kentucky and New Mexico, amended state supreme *court rules* contain language asserting that the Bar must be committed to the goal of providing legal services to the public at an affordable price. Such amendments set precedents and may be the result of the ABA's stated interest in making the best use of nonlawyer services. Further evidence of judiciary involvement can be found in Virginia, Wisconsin, and Arizona, states awaiting the approval of new definitions. In each of these states the pending *court rule* changes are the direct result of UPL concerns. The judiciary is aggressively tackling UPL issues as they relate to paralegal activities.

Following Kentucky's *court rule* definition, a subsequent segment explains the justification:

This rule is not intended to stifle the proper development and expansion of paralegal services, but to provide guidance and ensure growth in accordance with the Code of Professional Responsibility, statutes, court rules and decisions, rules and regulations of administrative agencies, and opinions rendered by committees on professional ethics and unauthorized practice of law. While the responsibility for compliance with standards of professional conduct rests with members of the bar, a paralegal should understand those standards. . . . However, the paralegal does have an independent obligation to refrain from illegal conduct. Additionally, and notwithstanding the fact that the Code of Professional Responsibility is not binding upon lay persons, the very nature of a paralegal's employment imposes an obligation to refrain from conduct which would involve the lawyer in a violation of the Code. (Ky. Sup. Ct. R. 3.700)

As stated by the Kentucky Supreme Court, definition and regulation is “not intended to stifle the proper development and expansion of paralegal services, but to provide

guidance and ensure growth” (Ky. Sup. Ct. R. 3.700). Statsky (1997) claimed that the impact of the emergence and growth of the paralegal occupation has resulted in a trend toward increased regulation. It appears so; most states have identified a need for paralegal regulation in the form of definition.

Although Micheletti (2000) described a general lack of concern by attorneys, Johnstone and Wenglinsky (1985) posited that the emergence of this paraprofession has generated an undercurrent of concern among attorneys. Widespread UPL worries reinforce their supposition and activities by courts, legislatures, and bar associations demonstrate a growing involvement by attorneys. As described by Johnstone and Wenglinsky, law is frequently a means of social control and manifests itself in the form of “formal rules and regulations promulgated by legislatures, courts, and administrative bodies” (p. 153).

Wilensky (1964) proclaimed that licensing and certification are examples of “weapons in the battlefield of professional authority” and territorial boundary issues (p. 145). In his view, although the turn toward legal regulation might be used by an occupation to seek to status enhancement or job protection, it might also be used against occupational groups. Although there appears to be evidence of professional authority and territorial boundary issues involved in defining and regulating the paralegal, motives are equivocal. The NALA (1999a) advised that the benefits of regulation must outweigh the potential adverse effects. As a practical matter, it is the necessity of some form of definition and regulation, rather than the benefit, that outweighs the obstacles.

Issues involved in paralegal regulation are weighty. Comprehensive definition and regulation is in its infancy. In this respect, the profession is quite young. With the

situation so fluid and the methods and factors so numerous, there is no obvious solution as to how best to define and regulate the legal paraprofessional. One factor that is important and very apparent, however, is that there be supervision, whether by courts, legislatures, or the organized bar. When states do not attach conditions to entry into the paralegal profession, attorneys responsible for the work performed best conduct the authorization and supervision of the resulting services.

Recommendations

Because there exists no comprehensive assimilation or central repository of information on issues of paralegal definition and regulation, I recommend the following:

1. The state-by-state summary generated by this study should be utilized as the foundation for the formulation of a central repository. The repository should be accessible as an on-line searchable database and maintained by legal professionals affiliated with the ABA's Standing Committee on Legal Assistants (SCOLA). To that end, I propose that:

- a. A task force, appointed by the ABA's SCOLA be assigned the responsibility of maintaining and updating the state findings. The task force members should consist of SCOLA members and at least one member from each of the NALA, NFPA, and AAFPE.

- b. Each state's bar association's guidelines for paralegals or utilization of paralegals, including educational credentials, should be collected and included in the database. State bar information on paralegal affiliate membership should also be detailed.

c. States' definitions and regulation attempts should be monitored and reported via a state reporting system, utilizing the services of state bar associations and state affiliates of the NALA and NFPA, where applicable.

d. The task force should publicize the existence of the web-based site, targeting paralegal educators and bar members. In addition, policymakers should be apprised of the database and educated as to its contents and benefits.

e. The task force should provide update-reports to the national and state associations of each of the NALA, NFPA, and AAFPE. Significant developments should be posted on their respective websites.

f. Paralegal professional organizations should be knowledgeable about the database and actively promote its use.

2. A comprehensive summary of paralegal educational qualifying factors should be generated and maintained on the AAFPE website. This summary should reflect educational credentials on a state-by-state basis, whether mandated by statutes or court rule or rulings or as suggested within bar associations' guidelines. AAFPE members should be encouraged to use this information for advising students and planning curricula.

Implications for Future Research

As previously stated, there has been a scarcity of research about this occupational group. In an effort to address uncertainties concerning paralegal definition and regulation across the states, this study has amassed a comprehensive summary. There remains, however, a sizable gap in what has been done and what needs to be accomplished. It is hoped that the resulting state-by-state directory will serve as a beginning point for critical

discussion. Further analysis of some of the common dimensions regarding paralegals across states is now possible.

Obvious topics for future study involve the two larger issues within the legal community that directly impact the question of how and to what extent paralegals should be regulated and defined. The issues are the *unauthorized practice of law* (UPL) and the problem of providing quality legal services to the public in a cost-effective manner.

As a practical matter, a next step might be to gather and classify the various bases for UPL complaints involving paralegals in order to address the uncertainty of what activities fall within its scope. As previously noted, the lines of demarcation for what constitutes UPL are not well defined. The findings of such a study might then be used as an educational tool. The importance of UPL-related research lies within its ability to properly instruct the practitioners, both *professional* and *paraprofessional*.

The challenge of defining *professional* versus *paraprofessional* services also presents itself in the area of cost-effectiveness. Specifying services that can be performed by a paralegal will encourage attorneys to employ their services, remove uncertainties about the ethical propriety of doing so, and promote savings for consumers. As suggested by the ABA and at least two states' supreme courts via rule promulgations, there is a growing push toward cost-efficiency by means of increased use of nonlawyer services. Research on the comparative cost of *professional* versus *paraprofessional* services on specific tasks may be of future value. One possible way of approaching the comparison is by task classification under the umbrella of various areas of substantive practice.

A related matter of importance and interest is whether there are valid justifications for not utilizing quality *paraprofessional* services, especially when clients benefit financially. To that end, studies regarding the public perception of utilization of paralegal services may also be beneficial. Depending on their outcome, public perception studies may indicate a need for increased consumer education. As described by Gross (1984), regulation is no longer an esoteric issue but concerns practical questions of public accountability, cost control, occupational recognition, occupational competition, and public dissatisfaction. Properly planned and executed studies addressing such challenges as face the legal community are not only beneficial to practitioners, educators, and policymakers, but also to the public.

Concluding Remarks

Without a doubt, the introduction of paralegals as a major occupational group has altered and will continue to alter the nature of legal practice for both practitioners and consumers. Cheatham (1965) advised that:

The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life. This is true of the most important of legal institutions, the profession of law. The profession, too, must change when conditions change in order to preserve and advance the social values that are its reasons for being. (p. 440)

Shimberg (1977) stated that a “confrontation is developing between the professions and the public over the matter of professional regulation. . . . [T]o whom [are] primary allegiances [owed] – the public or to the professional groups?” (p. 154). With regard to the public and the legal profession, Justice Trayno made a cardinal point in *Hildebrand v. State Bar*, 36 Cal. 2d 504, 225 P.2d 508 (1950). He reminded the profession that:

Given the primary duty of the legal profession to serve the public, the rules it establishes to govern [itself] . . . must be directed at the performance of that duty. Canons . . . that would operate to deny [the public] . . . the effective legal assistance . . . can be justified only if such a denial is necessary to suppress professional conduct that in other cases would be injurious to the effective discharge of the profession's duties to the public. (p. 522)

In seeking to define and regulate paralegals, both *professionals* and *paraprofessionals* must heed the wisdom of Justice Trayno.

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* Legal citations follow the rules provided in *The Bluebook: A Uniform System of Citation* (17th ed., 2000). The Bluebook requires use of abbreviations and specifies that court rule citations should not contain dates.

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- Wyo. Prof. Conduct R. 5.3.
- Wyoming State Bar. (2002). *Multidisciplinary Task Force*. Retrieved July 20, 2002, from http://www.wyomingbar.org/staff_listings.asp
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Appendix

Introduction

The Appendix is a state-by-state summary of paralegal definition and regulation. Each summary provides the state's definition of *paralegal*, if any; the corresponding citation; and the entity by which it is defined. In addition, the summary advises whether mandatory paralegal licensure or certification has been attempted within that state. If attempted, the form of the mandate, *licensure* or *certification*, by whom it was attempted, and the status of the action is provided. Next, contact information for legal professional organizations is given. A discussion of paralegal definition and regulation within the state follows. Original verbiage is double-spaced; quoted materials are single-spaced. Also set forth is the state's Model Rule comparable to ABA Rule 5.3 that addresses attorneys' (*professionals*) responsibilities regarding nonlawyer assistants (*paraprofessionals*).

Alabama

Definition:

Legal service provider. Anyone licensed to practice law by the State of Alabama or engaged in the practice of law in the State of Alabama. The term legal service provider includes professional corporations, associations, and partnerships and the members of such professional corporations, associations, and partnerships and the persons, firms, or corporations either employed by or performing work or services for the benefit of such professional corporations, associations, and partnerships including, without limitation, law clerks, legal assistants, legal secretaries, investigators, paralegals, and couriers.

How Defined: Statute

Ala. Code § 6-5-572(2) (2002)

Mandate attempted: No

Alabama State Bar
415 Dexter Avenue
Montgomery, AL 36104
Phone: (334) 269-1515
Fax: (334) 269-6310
Web Address: <http://www.alabar.org>

Paralegal Associations:

NALA Affiliate: Alabama Association of Legal Assistants (AALA)
Post Office Box 55921
Birmingham, AL 35255-5921
Email: President@aala.net
Web: <http://www.aala.net>

NFPA Affiliate: Gulf Coast Paralegal Association (GCPA)
Post Office Box 66705
Mobile, AL 36660
Email: gcpa@groups.msn.com
Web: <http://groups.msn.com/gcpa>

Discussion:

The Code of Alabama, Title 6 – *Civil Practice* (2002), provides a definition of *legal service provider* that encompasses *paralegals* and all other law office staff. In addition, the statute sets forth the standard of care applicable to a *legal service provider* as follows:

(3) Standard of care.

- a. The standard of care applicable to a legal service provider is that level of such reasonable care, skill, and diligence as other similarly situated legal service providers in the same general line of practice in the same general locality ordinarily have and exercise in a like case.
- b. However, if the legal service provider publishes the fact that he or she is certified as a specialist in an area of the law or if the legal service provider solicits business by publicly advertising as a specialist in an area of the law, the standard of care applicable to such legal service provider shall be such reasonable care, skill and diligence as other legal service providers practicing as a specialist in the same area of the law ordinarily have and exercise in a like case. (§ 6-5-572(3))

Rule 5.3 of Alabama Rules of Professional Conduct sets forth the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a). A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b). A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c). A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer, if:
 - (1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Alaska

Definition: None

Mandate attempted: No

Alaska Bar Association
Post Office Box 100279
550 West 7th Avenue, Suite 1900
Anchorage, AK 99501
Phone: (907) 272-7469
Fax: (907) 272-2932
Web Address: <http://www.alaskabar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Alaska Association of Paralegals (AAP)
Post Office Box 101956
Anchorage, AK 99510-1956
Phone: (907) 646-8018
Email: info@alaskaparalegals.org
Web: <http://www.alaskaparalegals.org>

Discussion:

Rule 5.3 of Alaska Rules of Professional Conduct sets forth the responsibilities of attorneys regarding nonlawyer assistants but does not define such assistants. The rule became effective July 15, 1993, and was amended January 15, 1999 (R. 5.3):

Rule 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) each partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has

direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose a confidence or secret relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Arizona

Definition:

A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.

How Defined: Court

Continental Townhouses E. Unit One Ass'n v. Brockbank, 733 P.2d 1120, 1128
(Ariz. Ct. App. 1986)

Mandated attempted: Yes
Form: Certification
By Whom: Bar Association
Status: Pending (See Discussion)

State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, AZ 85003-1742
Phone: (602) 252-4804
Fax: (602) 271-4930
Web Address: <http://www.azbar.org>

Paralegal Associations:

NALA Affiliates: Arizona Paralegal Association (APA)
Post Office Box 392
Phoenix, AZ 85001
Phone: (602) 258-0121
Email: webmaster@azparalegal.org
Web: <http://www.azparalegal.org>

Legal Assistants of Metropolitan Phoenix (LAMP)
Post Office Box 13005
Phoenix, AZ 85002
Email: azlamp@hotmail.com
Web: <http://www.geocities.com/azlamp>

Tucson Association of Legal Assistants (TALA)
Post Office Box 257
Tucson, AZ 85702
Web: <http://www.azstarnet.com/nonprofit/tala>

NFPA Affiliate: Arizona Association of Professional Paralegals, Inc.
(AzAPP)
Post Office Box 430
Phoenix, AZ 85001
Email: Arizona@paralegals.org
Web: <http://www.paralegals.org/Arizona>

Discussion:

The current definition of *paralegal* in Arizona is controlled by a pronouncement of the Court of Appeals that utilized the ABA's definition of *paralegal* and stated that the terms *paralegal* and *legal assistant* may be used interchangeably (*Continental Townhouses E. Unit One Ass'n v. Brockbank*, 733 P.2d 1120, Ariz. Ct. App. 1986).

Pending decision is Supreme Court action on recommendations from the State Bar of Arizona (State Bar of Arizona Consumer Protection Committee, n.d.). In 2000, the Bar directed its Consumer Protection Committee (CPC) to propose amendments to the Arizona Supreme Court Rules (Ny, 2001). In September 2001, the CPC submitted *Proposed Changes and Additions to Supreme Court Rules for Regulation of Unauthorized Practice of Law* to the Bar for review and comment (State Bar of Arizona CPC, 2001). Recommendation No. 3 of the *Report and Recommendations Approved by the Board of Governors* urged the Supreme Court to establish a paralegal definition and certification process for supervised paralegals (State Bar of Arizona CPC, n.d.). In addition, the Report recommended the regulation of independent paralegals and stated that

offenders routinely misuse these titles to misrepresent their authority to give legal advice or prepare legal documents. Consumers simply do not understand that a true paralegal or legal assistant does not run their own business. Legitimate paralegals and legal assistants . . . are those paraprofessionals who work exclusively under the supervision of a lawyer. The only way to prevent misuse of these terms is to establish accurate definitions within a UPL enforcement framework that would penalize misuse. (p. 22)

The proposal to regulate paralegals was part of a larger package dealing with *unauthorized practice of law* (UPL) issues. The proposal included four significant additions to Arizona Supreme Court Rule 31. The four additions specified definitions for the *practice of law*, *unauthorized practice of law*, *paralegal/legal assistant*, and *mediator* (State Bar of Arizona CPC, 2001). *Section B.* of the proposal included a report on recommendations for defining *paralegal/legal assistant* and CPC's considerations in composing the definition.

LeClair (2001) reported that the State Bar of Arizona had previously not been able to implement a new statute regarding UPL, despite numerous attempts. According to LeClair, the Supreme Court had been reluctant to become involved in the past. In the recent attempt, the Bar used the Supreme Court's own rules to define *practice of law* and *unauthorized practice of law* to establish a specific procedural system for the prosecution of UPL (LeClair). Thus, the new procedural system intended to use the Supreme Court powers already in place to regulate anyone who engaged in the *practice of law*. As noted by LeClair, this effectively bypassed the legislative process. In 2002, revisions to the proposed changes were filed as Exhibit A to the State Bar of Arizona's *Petition to Amend Supreme Court Rule 31 and to Add Rules 32, 76-80*. The petition, filed in April 2002, included the following:

4. *Definition of Paralegal/Legal Assistant.* A "legal assistant/paralegal" is a person qualified by education and training who performs substantive legal work, which requires a sufficient knowledge and expertise of 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. (p. 2)

The Supreme Court has ordered the Petition open for comment until October 1, 2002 (Arizona Supreme Court, 2002).

Arizona State Rules of Professional Conduct ER 5.3 addresses the responsibilities of lawyers regarding nonlawyer assistants:

ER 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

NOTES:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Arkansas

Definition: None

Mandate attempted: No

Arkansas Bar Association
400 West Markham
Little Rock, AR 72201
Phone: (501) 375-4606
Fax: (501) 375-4901
Web Address: www.arkbar.com

Paralegal Associations:

NALA Affiliate: Arkansas Association of Legal Assistants (AALA)
120 E. 4th Street
Little River, AR 72201
Phone: (501) 375-9131
Email: info@aala-legal.org
Web: <http://www.aala-legal.org>

NFPA Affiliate: None

Discussion:

Rule 5.3 of Arkansas Model Rules of Professional Conduct sets forth the responsibilities of attorneys regarding nonlawyer assistants but does not define such assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has the direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

California

Definition:

"Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, and who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her.

How Defined: Statute

Cal. Bus. & Prof. Code § 6450(a) (Deering 2002)

Mandate attempted: No

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Phone: (415) 538-2000
Fax: (415) 538-2305
Web Address: <http://www.calbar.ca.gov>

Paralegal Associations:

NALA Affiliates: California Alliance of Paralegal Associations (CAPA)
Post Office Box 2234
San Francisco, CA 94126
Email: caparalegal_2000@yahoo.com
Web: <http://www.caparalegal.org>

Los Angeles Paralegal Association (LAPA)
Post Office Box 71708
Los Angeles, CA 90071
Phone: (310) 921-3094
Fax: (310) 921-3095
Email: info@lapa.org
Web: <http://www.lapa.org>

Orange County Paralegal Association (OCPA)
Post Office Box 8512
Newport Beach, CA 92658
Phone: (714) 744-7747
Email: President@ocparalegal.org
Web: <http://www.ocparalegal.org>

Paralegal Association of Santa Clara County (PASCCo)
Post Office Box 26736
San Jose, CA 95159-6736
Phone: (408) 235-0301
Email: webdesigner@sccparalegal.org
Web: <http://www.sccparalegal.org>

Santa Barbara Paralegal Association (SBPA)
1224 Coast Village Circle, Suite 32
Santa Barbara, CA 93108
Email: Info@SBPA.org
Web: <http://www.sbparalegals.org>

Ventura County Association of Legal Assistants, Inc.
(VALA)
Post Office Box 24229
Ventura, CA 93002
Web: <http://www.vcparalegal.org>

San Joaquin Association of Legal Assistants (SJALA)
Post Office Box 28515
Fresno, CA 93729-8515

NFPA Affiliates:

Sacramento Valley Paralegal Association (SVPA)
Post Office Box 453
Sacramento, CA 95812-0453
Phone: (916) 763-7851
Email: svpa@svpa.org
Web: <http://www.svpa.org>

San Diego Association of Legal Assistants (SDALA)
Post Office Box 87449
San Diego, CA 92138-7449
Phone: (619) 491-1994
Email: SanDiego@paralegals.org

San Francisco Paralegal Association (SFPA)
Post Office Box 2110
San Francisco, CA 94126-2110
Phone: (415) 777-2390
Fax: (415) 586-6606
Email: SanFrancisco@paralegals.org
Web: <http://www.sfpa.com>

Discussion:

The definition of *paralegal* was first addressed by the California legislature and became public law on August 30, 1992 (NALA, 1999c). In 1995, a voluntary California Advanced Specialist (CAS) Certification became available to California paralegals (NALA, n.d.). The certification paralleled that of the CLA certification set forth by the NALA.

In 2000, new statutory language began regulating paralegals when California Business and Professional Code Section 6450. *Paralegals—Definition; Scope and Limitations of Lawful Activities; Qualifications; Certification.* was passed. Therese A. Cannon, Educational Consultant to the ABA Standing Committee on Legal Assistants, (2002) advised that although the requirements of Section 6450 dictated the qualifications and functions of paralegals in California, they did not mandate registration or certification of paralegals with any agency.

In addition to the definition, California Business and Professional Code Section 6450 (Deering 2002) addresses the scope and limitations of lawful paralegal activities and sets forth qualification and certification requirements:

- (a) . . . Tasks performed by a paralegal may include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.
- (b) Notwithstanding subdivision (a), a paralegal shall not do any of the following:
 - (1) Provide legal advice.
 - (2) Represent a client in court.
 - (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
 - (4) Act as a runner or capper, as defined in Sections 6151 and 6152.
 - (5) Engage in conduct that constitutes the unlawful practice of law.
 - (6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.
 - (7) In connection with providing paralegal services, induce a person to

make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. All continuing legal education courses shall meet the requirements of Section 6070. Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law.

Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public or a legal document assistant or unlawful detainer assistant as defined in Section 6400.

(f) If a legal document assistant, as defined in subdivision (c) of Section 6400, has registered, on or before January 1, 2001, as required by law, a business name that

includes the word "paralegal," that person may continue to use that business name until he or she is required to renew registration.

(g) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

Effective January 1, 2004, the statutory language of Section 6450 (e)-(f) changes to the following:

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004.

Section 6454 of California Business and Professional Code (Deering 2002) states that the “terms ‘paralegal,’ ‘legal assistant,’ ‘attorney assistant,’ ‘freelance paralegal,’ ‘independent paralegal,’ and ‘contract paralegal’ are synonymous.” Section 6451 of the Code proscribes activities for paralegals:

It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this chapter shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. "Consumer" means a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

Section 6452(b) states that “an attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal’s negligence, misconduct, or violation of this chapter”.

Effective January 1, 2000, a new occupation of non-lawyers, known as *legal document assistants*, was authorized to prepare legal documents for people performing their own legal tasks (California Association of Legal Document Assistants [CALDA], n.d.). California

Business and Professional Code Section 6400 (Deering 2002) defines a *legal document assistant* as follows:

Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority. This paragraph shall not apply to any individual whose assistance consists merely of secretarial or receptionist services. (§ 6400(c)(1))

In California, in order for an occupation to create a new category of licensed professional it must submit a plan in accordance with California Government Code Section 9148.4 (Deering 2002) subject to the criteria and review process set forth in Section 9148.10.

Colorado

Definition:

Legal assistants (also known as paralegals) are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which will qualify them to do work of a legal nature under the direct supervisions of a licensed attorney.

How Defined: Bar Association

*Colorado Paralegals-Proposed Guidelines to the Next Century and Beyond:
Part I, 1996, p. 63*

Mandate Attempted: No

Colorado Bar Association
1900 Grant Street, Suite 900
Denver, CO 80203
Phone: (303) 860-1115
Fax: (303) 894-0821
Web Address: <http://www.cobar.org>

Paralegal Associations:

NALA Affiliates: Association of Legal Assistants of Colorado (ALAC)
Post Office Box 1678
Colorado Springs, CO 80919

Legal Assistants of the Western Slope
Post Office Box 40
Grand Junction, CO 81502

NFPA Affiliate: Rocky Mountain Paralegal Association (RMPA)
Post Office Box 481864
Denver, CO 80248-1864
Phone: (303) 370-9444
Email: webmaster@rockymtnparalegal.org
Web: <http://rockymtnparalegal.org>

Discussion:

In July of 1986, the Colorado Bar Association (CBA) adopted the definition of *paralegal* shown above and established paralegal guidelines (NALA, 1999c). The Bar has approved guidelines for the utilization of paralegals in 18 specialty practice areas (Colorado Bar

Association, 2002). On February 7, 2002, the Paralegal Committee of the CBA and the Rocky Mountain Paralegal Association (RMPA) met to discuss the future of licensure and regulation of paralegals in the State of Colorado (Hindin-King & Werner, 2002). The discussion centered on educational requirements for licensure and proposals for a definition under the Constitution of the State of Colorado. According to Hindin-King and Werner, the matter was tabled pending further study.

Colorado Revised Statutes Section 24-34-104.1 (2002) provides review procedures for new regulation of occupations and professions:

(1) The general assembly finds that regulation should be imposed on an occupation or profession only when necessary for the protection of the public interest. The general assembly further finds that establishing a system for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with the public interest.

(2) Any professional or occupational group or organization, any individual, or any other interested party which proposes the regulation of any unregulated professional or occupational group shall submit the following information to the department of regulatory agencies no later than July 1 of any year. A proposal to regulate a professional or occupational group shall be reviewed only when the party requesting such review files with the department a statement of support for the proposed regulation which has been signed by at least ten members of the professional or occupational group for which regulation is being sought or at least ten individuals who are not members of such professional or occupational group, along with the following information, no later than July 1 of any year:

(a) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(b) A definition of the problem and the reasons why regulation is deemed necessary;

(c) The reasons why certification, registration, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen;

(d) The benefit to the public that would result from the proposed regulation; and

(e) The cost of the proposed regulation.

(3) The department of regulatory agencies shall conduct an analysis and evaluation of the proposed regulation. The analysis and evaluation shall be based upon the criteria listed in paragraph (b) of subsection (4) of this section. The department of regulatory agencies shall submit a report to the proponents of such

regulation and to the general assembly no later than October 15 of the year following the year in which the proposed regulation was submitted.

(4) (a) (Deleted by amendment, L. 96, p. 796, § 7, effective May 23, 1996.)

(b) In such hearings, the determination as to whether such regulation of an occupation or a profession is needed shall be based upon the following considerations:

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(III) Whether the public can be adequately protected by other means in a more cost-effective manner.

(c) (Deleted by amendment, L. 96, p. 796, § 7, effective May 23, 1996.)

(5) Repealed.

(6) The supporters of regulation of a professional or occupational group may request members of the general assembly to present appropriate legislation to the general assembly during each of the two regular sessions that immediately succeed the date of the report required pursuant to subsection (3) of this section without the supporters having to comply again with the provisions of subsections (2), (3), and (4) of this section. Bills introduced pursuant to this subsection (6) shall count against the number of bills to which members of the general assembly are limited by any joint rule of the senate and the house of representatives. The general assembly shall not consider the regulation of more than five occupations or professions in any one session of the general assembly.

Rule 5.3 of Colorado Rules of Professional Conduct sets forth attorneys' responsibilities regarding nonlawyer assistants:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable

remedial action.

Comment. Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Connecticut

Definition:

A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

How Defined: Bar Association

Guidelines for Lawyers Who Employ or Retain Legal Assistants and Guidelines for Legal Assistants, 2002, p. 1

Mandate Attempted: No

Connecticut Bar Association
30 Bank Street
New Britain, CT 06050-0350
Phone: (860) 223-4400
Fax: (860) 223-4488
Web Address: <http://www.ctbar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliates: Connecticut Association of Paralegals (CAP)
Post Office Box 134
Bridgeport, CT 06601-0134
Email: Connecticut@paralegals.org
Web: <http://www.paralegals.org/Connecticut>

Central Connecticut Paralegal Association, Inc. (CCPA)
Post Office Box 230594
Hartford, CT 06123-0594
Email: CentralConnecticut@paralegals.org
Web: <http://www.paralegals.org/CentralConnecticut>

New Haven County Association of Paralegals, Inc.
Post Office Box 862
New Haven, CT 06504-0862

Discussion:

Approximately six months after it accepted paralegals as associate members, the Connecticut Bar Association (CBA) developed guidelines for attorneys and paralegals (Ganci, n.d.). The CBA's House of Delegates approved the *Guidelines for Lawyers Who Employ or Retain Legal Assistants and Guidelines for Legal Assistants* on January 13, 1997 (Connecticut Bar Association, 2002). The Guidelines, now updated, adopted the ABA's 1986 definition of a legal assistant. Guideline 1 details a lawyer's responsibility for all professional actions of the legal assistant and Guideline 2 itemizes tasks that a legal assistant may perform, describing the listing as *illustrative not exhaustive*:

Guideline 1- Responsibility and Supervision. A lawyer is responsible for all of the professional actions of a legal assistant performing legal services under the lawyer's direction. The lawyer should take all reasonable supervisory measures to make certain that the legal assistant is not engaged in the unauthorized practice of law and that the legal assistant's conduct is consistent with the lawyer's obligations under the Rules of Professional Conduct.

Guideline 2 – Tasks Legal Assistants May Perform. If a lawyer maintains responsibility for a legal assistant's work product and adequately supervises the legal assistant's performance, a wide and varied range of tasks may properly be delegated by a lawyer to a legal assistant, including many tasks commonly performed by lawyers. Some of the more important of these tasks are listed below, the list being illustrative not exhaustive.

Interviewing. Clients, witnesses and others may be interviewed by a legal assistant, but legal advice may not be given by the legal assistant nor may the legal assistant accept or reject clients or set legal fees.

Drafting Legal Documents. Legal documents may be drafted by a legal assistant but such documents shall be reviewed by the lawyer.

Legal Research. A legal assistant may conduct statutory, case law and other legal research but the research product shall be reviewed by the lawyer.

Appearance Before Courts and Other Adjudicatory Bodies. A legal assistant may appear before adjudicatory bodies only if authorized by law to do so. However, with appropriate approval, a legal assistant may accompany and assist counsel at pretrial conferences and judicial and other adjudicatory proceedings.

Will Executions. A legal assistant may attend will executions and act as a witness but may not provide legal advice at will executions.

Real Estate Closings. A legal assistant may attend closings, even though no lawyer from the law firm employing the legal assistant is also present. However, at the closing the legal assistant may act only as a messenger and should not use or express any independent opinion or judgment about execution of the documents, changes in adjustments or price, or other matters involving documents or funds. For further particulars, see comment below.

Depositions. A legal assistant may summarize and index depositions and, with appropriate approval, attend the taking of depositions, but may not conduct depositions.

Preparing Tax Returns. A legal assistant may prepare client income, estate, gift and other tax returns but such returns shall be reviewed by the lawyer.

Comment. Although there are many tasks that legal assistants may legally perform, in delegating tasks to any particular legal assistant, the lawyer should be confident that based on the legal assistant's education, training, experience and overall abilities, the tasks will be performed in a timely and satisfactory manner.

The remaining guidelines address ethical issues. In addition, the Bar has formulated *Guidelines for Legal Assistants* (Connecticut Bar Association, 2002).

Rule 5.3 of the Connecticut Rules of Professional Conduct sets forth lawyers' responsibilities regarding nonlawyer assistants:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (2) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (A) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (B) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENTARY: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose

information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Delaware

Definition:

Paralegals are persons who, although not members of the legal profession, are qualified through education, training, or work experience, are employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the task.

How Defined: Court

McMackin v. McMackin, 651 A.2d 778, 779 (Del. Fam. Ct. 1993)

Mandate Attempted: No

Delaware State Bar Association
301 North Market Street
Wilmington, DE 19801
Phone: (302) 658-5279
Fax: (302) 658-5212
Web Address: <http://www.dsba.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Delaware Paralegal Association (DPA)
Post Office Box 1362
Wilmington, DE 19899-1362
Email: Delaware@paralegals.org
Web: <http://www.paralegals.org/Delaware>

Discussion:

The Family Court of Delaware adopted the above definition of *paralegal* in the case of *McMackin v. McMackin*, 651 A.2d 778 (Del. Fam. Ct. 1993). The Court stated that

the education, training or work experience of the person which enabled him or her to acquire sufficient knowledge of legal concepts [may be taken into consideration]. . . . The Court recognizes that not all those who work in a paralegal capacity have a paralegal degree or license, but many of these people do possess expertise, which should be recognized in family law matters. (p. 780)

Delaware Professional Conduct Rule 5.3 sets forth attorneys' responsibilities regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding non-lawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Florida

Definition:

A paralegal or legal assistant is a person qualified by education, training, or work experience, who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible.

How Defined: Court

Fla. Bar Reg. R. 10-2.1(b)

Mandate attempted: No

The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
Phone: (850) 561-5600
Fax: (850) 561-5826
Web Address: <http://www.flabar.org>

Paralegal Associations:

NALA Affiliates:

Paralegal Association of Florida, Inc. (PAF)
Post Office Box 7073
West Palm Beach, FL 330405
Phone: (561) 833-1408
Fax: (561) 659-1824
Email: execdirector@pafinc.org
Web: www.pafinc.org

Central Florida Paralegal Association, Inc. (CFPA, Inc.)
Post Office Box 1107
Orlando, FL 32902
Phone: (407) 672-6372
Web: <http://www.cfpainc.com>

Gainesville Association of Paralegals, Inc. (GAP)
Post Office Box 2519
Gainesville, FL 32602
Phone: (904) 462-2249
Fax: (804) 462-0985
Email: gala@afn.org
Web: <http://www.afn.org/~gala>

Jacksonville Legal Assistants, Inc. (JLA)
Post Office Box 52264
Jacksonville, FL 32201
Phone: (904) 366-8440
Email: Info@jaxla.org
Web: <http://www.jaxla.org>

Southwest Florida Paralegal Association, Inc. (SWFPA)
Post Office Box 2094
Sarasota, FL 34230
Email: from website
Web: <http://www.swfloridaparalegals.com>

South Florida Paralegal Association (SFPA)
Post Office Box 110603
Miami, FL 33111
Phone: (305) 944-0204
Web: <http://www.sfpa.info>

Volusia Association of Paralegals (VAP)
Post Office Box 15075
Daytona, FL 32115-5075
Email: from website
Web: <http://www.volusiaparalegals.com>

Northwest Florida Paralegal Association (NwFPA)
30 S. Spring Street
Pensacola, FL 32501

NFPA Affiliate:

Tampa Bay Paralegal Association (TBPA)
(formerly Florida Association of Paralegals, Inc.)
Post Office Box 2722
Tampa Bay, FL 33602

Discussion:

A voluntary certification that complements the NALA's CLA program is available to Florida paralegals (NALA, n.d.). The Paralegal Association of Florida, Inc. administers the exam and Florida was the first state to offer such a certification (NALA, n.d.).

Amendments to Rules Regulating the Florida Bar were approved in April, 2002, and, in addition to the definition stated above, Florida Bar Regulation Rules advise that:

It shall constitute the unlicensed practice of law for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules to offer or provide legal services directly to the public or for a person who does not meet the definition of paralegal or legal assistant as set forth elsewhere in these rules to use the title paralegal, legal assistant, or other similar term in providing legal services or legal forms preparation services directly to the public. (R. 10-2.1)

The amendment resulted from an effort to stop “the number of rising complaints of the unauthorized practice of law involving paralegals” (Pareti, 2002, p. 23). Florida paralegal associations joined forces to request the Court to “regulate paralegals and set up standards for those entering the legal assistant profession” (Tremore, 2002, p. 20). The paralegal association alliance felt that the rules did not “go far enough in offering safeguards to paralegals who are permitted by administrative agency guidelines to offer legal services to the public without attorney supervision” (p. 20).

Florida Statutes Annotated (2002) contain a section in effect since October 1, 1987, that cites a definition of *legal assistant* in the context of an action in which attorneys' fees are to be determined or awarded by the Court (NALA, 1999c):

For purposes of this section "legal assistant" means a person, who under the supervision and direction of a licensed attorney engages in legal research, and case development or planning in relation to modifications or initial proceedings, services, processes, or applications; or who prepares or interprets legal documents or selects, compiles, and uses technical information from references such as digests, encyclopedias, or practice manuals and analyzes and follows procedural problems that involve independent decisions. (§ 57.104)

In the case of *Florida Bar v. Neiman*, 27 Fla. L. Weekly S 437, 816 So. 2d 587 (2002), the Supreme Court ruled that, “Although there is no Rule Regulating the Florida Bar specifically dealing with the employment of paralegals, . . . we conclude that paralegals may only perform such services as may be ethically performed by other lay persons employed by the business entity” (p. 598).

New amendments to rules concerning attorneys' responsibilities regarding nonlawyer assistants were adopted on April 25, 2002 (NALA, 2002). The amendments advise that a person using the title *paralegal* or *legal assistant* must work within the supervisory capacities as set forth in Florida Bar Regulation Rule 4-5.3:

RULE 4-5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

- (a) Use of Titles by Nonlawyer Assistants. A person who uses the title of paralegal, legal assistant, or other similar term when offering or providing services to the public must work for or under the direction or supervision of a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar.
- (b) Supervisory Responsibility. With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:
- (1) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
 - (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
 - (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (B) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
- (c) Ultimate Responsibility of Lawyer. Although paralegals or legal assistants may perform the duties delegated to them by the lawyer without the presence or active involvement of the lawyer, the lawyer shall review and be responsible for the work product of the paralegals or legal assistants.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals such as paralegals and legal assistants. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client. The measures employed in supervising nonlawyers should take account of the level of their legal training and the fact that they are not subject to professional discipline. If an activity requires the independent judgment and participation of the lawyer, it cannot be properly delegated to a nonlawyer employee.

Nothing provided in this rule should be interpreted to mean that a nonlawyer may have any ownership or partnership interest in a law firm, which is prohibited by rule 4-5.4. Additionally, this rule would not permit a lawyer to accept employment by a nonlawyer or group of nonlawyers, the purpose of which is to provide the supervision required under this rule. Such conduct is prohibited by rules 4-5.4 and 4-5.5.

Florida Statutes Annotated Section 11.62 (2002) sets forth the criteria for legislative review of any proposed regulation of an unregulated occupation:

- (1) This section may be cited as the "Sunrise Act."
- (2) It is the intent of the Legislature:
 - (a) That no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
 - (b) That no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.
- (3) In determining whether to regulate a profession or occupation, the Legislature shall consider the following factors:
 - (a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
 - (b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
 - (c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
 - (d) Whether the public is or can be effectively protected by other means; and
 - (e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.
- (4) The proponents of legislation that provides for the regulation of a profession or occupation not already expressly subject to state regulation shall provide, upon request, the following information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred:
 - (a) The number of individuals or businesses that would be subject to the regulation;
 - (b) The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;

- (c) Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;
 - (d) A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
 - (e) A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
 - (f) A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
 - (g) A copy of any federal legislation mandating regulation;
 - (h) An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
 - (i) The cost, availability, and appropriateness of training and examination requirements;
 - (j) The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
 - (k) The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
 - (l) The details of any previous efforts in this state to implement regulation of the profession or occupation; and
 - (m) Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.
- (5) The agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation regarding:
- (a) The departmental resources necessary to implement and enforce the proposed regulation;
 - (b) The technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professions and occupations under existing law; and
 - (c) If applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme.
- (6) When making a recommendation concerning proposed legislation providing for new regulation of a profession or occupation, a legislative committee shall determine:
- (a) Whether the regulation is justified based on the criteria specified in subsection (3), the information submitted pursuant to request under subsection (4), and the information provided under subsection (5);
 - (b) The least restrictive and most cost-effective regulatory scheme that will adequately protect the public; and
 - (c) The technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

Georgia

Definition:

“Legal assistant”, “paraprofessional” and “paralegal” are defined as any lay person not admitted to the practice of law in this State, who is an employee of, or an assistant to, an active member of the State, who is an employee of, or an assistant to, an active member of the State Bar of Georgia or to a partnership or professional corporation comprised of active members of the State Bar of Georgia and who renders services relating to the law of such member, partnership or professional corporation under the direct control, supervision and compensation of a member of the State Bar of Georgia.

How Defined: Bar Association

State Bar of Georgia State Disciplinary Board, Advisory Op. No. 21, p. 2 (1977)

Mandate attempted: No

State Bar of Georgia
104 Marietta Street, NW, Suite 100
Atlanta, GA 30303
Phone: (404) 527-8700
Fax: (404) 527-8717
Web Address: <http://www.gabar.org>

Paralegal Associations:

NALA Affiliate: Southeastern Association of Legal Assistants (SEALA)
Post Office Box 9848
Savannah, GA 31412
Web: <http://www.seala.cjb.net>

NFPA Affiliate: Georgia Association of Paralegals, Inc. (GAP)
1199 Euclid Avenue, NE
Atlanta, GA 30307-1509
Phone: (404) 522-1457
Fax: (404) 522-0132
Email: gaparalegal@mindspring.com
Web: <http://www.gaparalegal.org>

Discussion:

The State Bar of Georgia’s State Disciplinary Board issued Advisory Opinion No. 21 on September 16, 1977, that contained the language stated in the definition above (State Bar of Georgia, 2002). Although not officially adopted by the bar, the advisory opinion ruling stands in

place of bar action. Prior to this ruling, Opinion No. 19 issued on July 18, 1975, controlled and set forth the following definition (State Bar of Georgia, 2002):

“Paralegals,” “legal assistants,” “law clerks,” “paraprofessionals,” “litigation assistants,” etc., are laymen who are not entitled to practice of law and who are not entitled to membership in the State Bar of Georgia. Although the State Bar may intercede in a paralegal’s activities to the extent that those activities might involve the unauthorized practice of law, it has not power to discipline paralegals in that its disciplinary jurisdiction is expressly limited to its membership. (State Bar of Georgia State Disciplinary Board, Advisory Op. No. 19, p. 1, 1975)

Of further note is Section 43-1A-3 of the Official Code of Georgia Annotated (2002) that defines the terms *certification*, *licensure*, and *regulation*. Title 43. *Professions and Businesses*, Chapter 1A. *Occupational Regulation Legislation Review* sets forth the following:

“Certificate” or “Certification” means a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by that regulatory entity and who may assume or use “certified” in the title or designation to perform prescribed occupational tasks. (§ 43-1A-3.(2))

“License,” “licensing,” or “licensure” means authorization to engage in a business or profession which would otherwise be unlawful in the state in the absence of authorization. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed business or professional tasks, who use a particular title, or who perform those tasks and use a particular title. (§ 43-1A-3.(6))

“Regulate” or “regulation” means the process of licensure or certification as defined in this Code section. (§ 43-1A-3.(7))

Rule 5.3 of the Georgia State Bar Rules governs lawyers’ responsibilities regarding nonlawyer assistants:

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a

violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
- (d) a lawyer shall not allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer, to:
 - (1) represent himself or herself as a lawyer or person with similar status;
 - (2) have any contact with the clients of the lawyer either in person, by telephone or in writing; or
 - (3) have any contact with persons who have legal dealings with the office either in person, by telephone or in writing.

The maximum penalty for a violation of this Rule is disbarment.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Hawaii

Definition: None
Mandate attempted: Yes
Form: Certification
By Whom: Supreme Court of Hawaii
Status: Postponed by recommendation of Bar Association

Hawaii State Bar Association
1132 Bishop Street, Suite 906
Honolulu, HI 96813
Phone: (808) 537-1868
Fax: (808) 521-7936
Web Address: <http://www.hsba.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Hawaii Paralegal Association (HPA)
Post Office Box 674
Honolulu, HI 96809
Email: board@hawaiiparalegal.org
Web: <http://www.hawaiiparalegal.org>

Discussion:

In 2000, the Supreme Court of Hawaii began seeking comments about its proposed amendments to Rule 5.3 of Hawaii's Rules of Professional Conduct and a proposed new Rule 1.14 of the Rules of the Supreme Court of Hawaii (Hawaii State Judiciary Public Affairs Office, 2000). The proposals were developed by the Supreme Court staff out of the need for guidance for attorneys and, also, due to a request by Federal Chief Judge David Ezra (Hawaii State Bar Association [HSBA] Task Force on Paralegal Certification, 2001). A task force was developed by the HSBA with the assignment of making recommendations. The Report of the HSBA Task Force contained a unanimous recommendation endorsing the concept of mandatory paralegal certification and made suggested revisions to the Court's draft (HSBA Task Force, 2001). In

March of 2001, the HSBA Board of Directors declined to adopt the recommendation of the Task Force but rather formed a special committee to review the issue of voluntary paralegal certification (Farmer & Forman, 2001). I. M. Ito, Executive Director of the HSBA, (personal communication, August 13, 2002) advised that, at its July 2002 meeting, the HSBA Board of Directors voted to ask the Court to not adopt the proposed rule changes with respect to paralegals at this time.

The Supreme Court's proposed Rule 1.14. *Paralegal Certification*. contained the following language:

(a) *Petition for Paralegal Certification*. Upon successful completion of any one of the following, an individual may petition the court for a Hawaii Paralegal Certificate:

- (1) successful completion of the Certified Legal Assistant (CLA) examination of the National Association of Legal Assistants, Inc.; or
- (2) graduation from an ABA approved program of study for paralegals; or
- (3) graduation from a course of study for paralegals that is institutionally accredited but not ABA approved, and that requires not less than the equivalent of sixty semester hours of classroom study; or
- (4) graduation from a course of study for paralegals, other than those set forth in (2) and (3) above, plus not less than six months of in-house training as a paralegal; or
- (5) a baccalaureate degree in any field, plus not less than six months in-house training as a paralegal; or
- (6) a minimum of three years of law-related experience under the supervision of a licensed lawyer, including at least six months of in-house training as a paralegal; or
- (7) two years of in-house training as a paralegal. Provided, further, than any paralegal hereunder shall have a high school diploma or general equivalency diploma (GED). For purposes of this rule, "in-house training as a paralegal" means the legal education of the employee by a licensed lawyer concerning paralegal duties and applicable legal and ethical requirements. In addition to reviewing and analyzing a paralegal's work assignments, the supervising lawyer shall also give the paralegal a reasonable amount of instruction directly related to the duties and obligations of the paralegal, including instruction on Hawaii Rules of Professional Conduct.

(b) *Contents of Petition*. The petition shall be verified and shall state: (i) Petitioner's current office address and telephone number, (ii) Petitioner's supervising lawyer, and (iii) under which provision of RSCH Rule 1.14(a)

Petitioner seeks certification. Petitioner shall attach to the petition (1) a copy of Petitioner's degree, certificate, or diploma, as applicable under RSCH Rule 1.14(a), and (2) an affidavit or declaration from Petitioner's supervising lawyer stating the nature and extent of Petitioner's in-house training as a paralegal or law-related experience, as applicable under RSCH Rule 1.14(a).

(c) *Nature of Proceeding: Filing Fee.* The petition for paralegal certification shall be docketed as an original proceeding and the Clerk shall assess and collect the filing fee for an original petition.

(d) *Form of Certificate.* Upon approval by the court and Petitioner's payment of a \$25.00 certification fee, the Clerk shall issue a paralegal certificate in the following form:

No. _____

Supreme Court of Hawaii

HAWAII PARALEGAL CERTIFICATE

(Petitioner's Name), having petitioned for certification as a paralegal, and having successfully met the requirements for such certification, is hereby certified as a paralegal in the State of Hawaii, with all the rights, powers, and privileges accorded therewith.

Given under the seal of the Supreme Court, this ___ day of _____.

FOR THE COURT:

Chief Justice

(e) *Limitations.* Certification does not entitle or permit a paralegal to engage in, or contribute to, any act that would constitute the unauthorized practice of law.

(f) *Disbarred or Suspended Lawyers.* A disbarred or suspended lawyer may petition the court for certification under this rule. Such applicants shall be bound by all applicable rules of court, including Rule 5.5. Hawaii Rules of Professional Conduct and Rule 2.16, Rules of the Supreme Court of Hawaii.

(Hawaii State Judiciary Public Affairs Office, 2000, pp. 4-5)

Proposed changes in Rule 5.3. *Responsibilities Regarding Nonlawyer Assistants.* included

the following:

(a) A lawyer shall not employ or retain a paralegal, legal assistant, or paraprofessional unless that person is certified in accordance with Rule 1.14, Rules of the Supreme Court of the State of Hawaii . . .

(e) A lawyer's use of a paralegal is subject to the following rules:

(1) a lawyer may permit a paralegal to assist in all aspects of lawyer's representation of a client, provided that:

(i) the lawyer discloses the status of the paralegal at the outset of any professional relationship with the client and the client consents to the paralegal's assistance;

(ii) the lawyer establishes the attorney-client relationship, is available to the client, and maintains control of all client matters;

(iii) the lawyer reviews the paralegal's work product and supervises performance of the duties assigned;

(iv) the lawyer remains responsible for the services performed by the paralegal to the same extent as though such services had been furnished entirely by the lawyer and such actions were those of the lawyer;

(v) the services performed by the paralegal supplement, merge with, and become part of the lawyer's work product;

(vi) the services performed by the paralegal do not require the exercise of unsupervised legal judgment; and

(vii) the lawyer instructs the paralegal concerning standards of client confidentiality. A paralegal shall not establish the attorney-client relationship, set legal fees, give legal advice, or represent a client in a court or administrative proceeding. A paralegal shall not encourage, engage in, or contribute to any act that would constitute the unauthorized practice of law.

(2) a paralegal may author and sign correspondence on the lawyer's letterhead, provided the paralegal's status is indicated and the correspondence does not contain legal opinions or give legal advice.

(3) a lawyer may identify a paralegal by name and title on the lawyer's letterhead and on business cards identifying the lawyer's firm.

(Hawaii State Judiciary Public Affairs Office, 2000, pp. 2-3)

Hawaii Revised Statutes Annotated Section 605-14 (2002) currently polices the unauthorized practice of law:

It shall be unlawful for any person, firm, association, or corporation to engage in or attempt to engage in or to offer to engage in the practice of law, or to do or attempt to do or offer to do any act constituting the practice of law, except and to the extent that the person, firm, or association is licensed or authorized so to do by an appropriate court, agency, or office or by a statute of the State or of the United States. Nothing in sections 605-14 to 605-17 contained shall be construed to prohibit the preparation or use by any party to a transaction of any legal or business form or document used in the transaction.

The existing Hawaii Rules of Professional Conduct Rule 5.3 sets forth responsibilities regarding nonlawyer assistants. It states that assistants, including paraprofessionals, act for the lawyer and advises the lawyer to give such assistants appropriate instruction and supervision:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

(b) A lawyer having direct supervisory authority over the nonlawyer shall make

reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyers; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. (Amended effective November 18, 1994.)

COMMENT:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Also noteworthy is Chapter 26H. *Hawaii Regulatory Licensing Reform Act* (2002).

Section 26H-2 defines the regulation of certain professions and vocations and Section 26H-6 defines the regulatory measures:

(1) The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;

(2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;

(3) Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable;

(4) Professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;

(5) Professional and vocational regulations shall be eliminated when the legislature determines that they have no further benefits to consumers;

(6) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons; and

(7) Fees for regulation and licensure shall be imposed for all vocations and

professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program. (§ 26H-2)

New regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls shall be referred to the auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed. The analysis required by this section shall set forth the probable effects of the proposed regulatory measure and assess whether its enactment is consistent with the policies set forth in section 26H-2. The analysis also shall assess alternative forms of regulation. The auditor shall submit each report of analysis to the legislature. (§ 26H-6)

Idaho

Definition: None

Mandate attempted: No

Idaho State Bar
Post Office Box 895
Boise, ID 83701
Phone: (208) 334-4500
Fax: (208) 334-2764
Web Address: <http://www2.state.id.us/isb>

Paralegal Associations:

NALA Affiliates: Idaho Association of Paralegals, Inc. (IAP)
Post Office Box 1254
Boise, ID 83701
Email: iap@idahoparalegals.org
Web: <http://www.idahoparalegals.org>

Gem State Association of Legal Assistants (GSALA)
Post Office Box 1118
Burley, ID 83318-1118

NFPA Affiliate: None

Discussion:

The Idaho Rules of Professional Conduct (IRPC) became effective on November 1, 1986, by order of the Supreme Court (Idaho State Bar & Idaho Law Foundation, Inc. [ISB & ILF], 2000). The IRPC were based largely on the ABA *Model Rules of Professional Conduct* with some Idaho variations and subsequent amendments by order of the Idaho Supreme Court (ISB & ILF, 2000). There was, however, no adoption of the ABA definition of *paralegal*. The Idaho Supreme Court adopted IRPC Rule 5.3 in the form presented below, but did not adopt the *Comment* (See also *Jenkins v. Idaho State Bar*, 120 Idaho 379, 816 P.2d 335, 1991). According to the Idaho State Bar, the *Comment* was included as an aid to the reader at the discretion of the

publisher and not at the direction of the Court (ISB & ILF, 2000). The *Comment* was borrowed from the ABA *Model Rules*.

The Idaho State Bar membership adopted *Model Guidelines for the Utilization of Legal Assistant Services* during the 1992 resolution process (Idaho State Bar, 2002). The Guidelines advise that lawyers are first and foremost directed by IRPC Rule 5.3 and nothing in the legal assistant guidelines is intended to be inconsistent with that rule (Idaho State Bar, 2002). Idaho Rules of Professional Conduct Rule 5.3 outlines the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.3 - Responsibilities Regarding Non-lawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Illinois

Definition:

“Paralegal” means a person who is qualified through education, training, or work experience and is employed by a lawyer, law office, governmental agency, or other entity to work under the direction of an attorney in a capacity that involves the performance of substantive legal work that usually requires a sufficient knowledge of legal concepts and would be performed by the attorney in the absence of the paralegal.

How Defined: Statute

5 Ill. Comp. Stat. 70/1.35 (2002)

Mandate attempted: No

Illinois State Bar Association
Illinois Bar Center
Springfield, IL 62701-1779
Phone: (217) 525-1760
Fax: (217) 525-0712
Web Address: <http://www.isba.org>

Paralegal Associations:

NALA Affiliates:

Central Illinois Paralegal Association (CIPA)
Post Office Box 1948
Bloomington, IL 61702
Email: cipainfo@aol.com
Web: http://members.aol.com/_ht_a/cipainfo/myhomepage/club.html

Heart of Illinois Paralegal Association (HIPA)
3001 W. Rohmann
Peoria, IL 61604

NFPA Affiliate:

Illinois Paralegal Association (IPA)
Post Office Box 452
New Lenox, IL 60451-0452
Phone: (815) 462-4620
Fax: (815) 462-4696
Email: IPA@ipaonline.org
Web: <http://www.ipaonline.org>

Discussion:

Section 5 of the Illinois Compiled Statutes 70/1.35 (2002), setting forth the definition of *paralegal*, became effective January 1, 1996. It was signed by the governor on July 7, 1995 (5 Ill. Comp. Stat. 70/1.35, 2002; NALA, 1999c). Prior to the enactment of the statutory definition the Illinois State Bar Association (1986) commented on the state's lack of paralegal definition and stated:

In Illinois there has, at present, been no effort made to define precisely what is a "paralegal". There are no standards prescribed, no testing requirements, no certification procedure and no guarantees, either to the public or to the profession, that any individual categorized as a "paralegal" has met certain minimum standards prescribed by either the Court or the State. (Advisory Op. No. 86-1, ¶ 6)

Although mandatory licensure for independent paralegals was attempted in 1990, there has been no attempt to mandate licensing for paralegals working under the supervision of lawyers. Senate Bill 2314 (1990), which proposed to license independent paralegals, was introduced in a special session of the legislature (Shimko-Herman, 1991). Senate Bill 0776 (1991), which proposed to regulate the delivery of legal services by legal technicians, was introduced in April of 1991 (Shimko-Herman). Neither was ultimately made into law.

Also of note is the case of *In re Discipio*, 163 Ill. 2d 515, 645 N.E.2d 906 (1994). In its opinion, the Illinois Supreme Court reiterated the language of *In re Kuta*, 86 Ill. 2d 154, 427 N.E.2d 136 (1981):

The line of demarcation between the work that a paralegal or a law clerk may do and those functions that can only be performed by an attorney is not always clear and distinct . . . [T]he public is not aware of the differences between the work of a paralegal and that of an attorney. (p. 526)

In 1994, the Appellate Court of Illinois further noted:

[T]here is very little case law from Illinois or any jurisdiction generally discussing paralegals. . . . Several Illinois cases support the idea that paralegals are an

extension of their employing attorney. (*Lyster v. Giancoloa [In re Estate of Devine]*, 635 N.E.2d 581, Ill. App. Ct. 1994)

Illinois Supreme Court Rule 5.3 addresses the responsibilities of attorneys regarding nonlawyer assistants. Rule 5.3 is part of the Illinois Rules of Professional Conduct that became effective on August 1, 1980:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer;

(a) The lawyer, and, in a law firm, each partner, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer and the firm;

(b) each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for a nonlawyer's conduct that would be a violation of these Rules if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Indiana

Definition:

- (a) . . . “Paralegal” means a person who is:
- (1) Qualified through education, training, or work experience; and
 - (2) Employed by a lawyer, law office, governmental agency, or other entity; to work under the direction of an attorney in a capacity that involves the performance of substantive legal work that usually requires a sufficient knowledge of legal concepts and would be performed by the attorney in the absence of the paralegal.

How Defined: Statute

Ind. Code Ann. § 1-1-4-6(a) (Michie 2002)

Mandate attempted: No

Indiana State Bar Association
230 East Ohio Street, 4th Floor
Indianapolis, IN 46204-2199
Phone: (317) 639-5465
Fax: (317) 266-2588
Web Address: <http://www.inbar.org>

Paralegal Associations:

NALA Affiliate: Indiana Legal Assistants, Inc. (ILA)
c/o Indiana State Bar Association
230 East Ohio Street, 4th Floor
Indianapolis, IN 46204
Email: ila@freeyellow.com
Web: <http://ila.freeyellow.com>

NFPA Affiliates: Indiana Paralegal Association (IPA)
Federal Station
Post Office Box 44518
Indianapolis, IN 46204
Phone: (317) 767-7798
Email: Indiana@paralegals.org
Web: <http://www.paralegals.org/Indiana>

Michiana Paralegal Association, Inc. (MPA)
Post Office Box 11458
South Bend, IN 46634
Email: Michiana@Paralegals.org
Web: <http://paralegals.org/Michiana>

Discussion:

Indiana's statutory definition of *paralegal* became effective in 1993 (Ind. Code Ann. § 1-1-4-6(a), Michie 2002). The legislation was initiated when the Indiana Supreme Court established a committee to promulgate rules on the utilization of paralegals (Shimko-Herman, 1991). On January 1, 1994, the Indiana Supreme Court adopted *Guidelines on the Use of Legal Assistants*, which are part of the Indiana Rules of Professional Conduct (NALA, 1999c).

Guideline 9.1 of the Indiana Rules of Professional Conduct addresses the use of legal assistants:

A legal assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana and in the employ of the lawyer or the lawyer's employers. Independent legal assistants, to-wit, those not employed by a specific firm or by specific lawyers are prohibited. A lawyer is responsible for all of the professional actions of a legal assistant performing legal assistant services at the lawyer's direction and should take reasonable measures to insure that the legal assistant's conduct is consistent with the lawyer's obligations under the Rules of Professional Conduct.

Guideline 9 states that, "Subject to the provisions in Rule 5.3, all lawyers may use legal assistants in accordance with the following guidelines" (Ind. R. Prof. Conduct Guideline 9). The Rule 5.3, referred to in Guideline 9, is contained within the Indiana Rules of Professional Conduct and advises lawyers of their responsibilities regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable

remedial action.

COMMENT. -- Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject [to] professional discipline.

Iowa

Definition:

A nonlawyer employed by a lawyer, law firm, agency or other employer may be referred to as a *legal assistant* if the majority of the nonlawyer's job responsibilities include duties as defined in EC 3-6(1). Such a *legal assistant* and the responsible supervising lawyer are at all times subject to the provisions of EC 3-6.

How Defined: Court

Iowa Code Prof. Resp. EC 3-6(4)

Mandate attempted: No

Iowa State Bar Association
521 East Locust, 3rd Floor
Des Moines, IA 50309-1939
Phone: (515) 243-3179
Fax: (515) 243-2511
Web Address: <http://www.iowabar.org>

Paralegal Associations:

NALA Affiliate: Iowa Association of Legal Assistants (IALA)
Post Office Box 93153
Des Moines, IA 50393
Email: ialanet@forbin.net
Web: <http://www.ialanet.org>

NFPA Affiliate: None

Discussion:

Iowa Court Rules contain the Iowa Code of Professional Responsibility Ethical Considerations. The ethical considerations contained in Canon 3 include the definition of *legal assistant*. The nonlawyer's job responsibilities referred to in the definition of *legal assistant* are also found in Iowa Code of Professional Responsibility EC 3-6 and state:

If it is for the purposes of (a) investigation of a factual situation or consultation with a lawyer's client for the purpose, only, of obtaining factual information; or (b) legal research; or (c) preparation or selection of legal instruments and documents, provided, however, that in each such situation the delegated work will assist the employer-lawyer in carrying the matter to a completed service either

through the lawyer's personal examination and approval thereof or by other additional participation by the lawyer. However, the delegated work must be such as loses its separate identity and becomes the service or is merged in the service of the lawyer. (EC 3-6(1))

Notwithstanding the ethical responsibilities imposed upon the nonlawyer under EC 3-6, Iowa Code of Professional Responsibility Disciplinary Rule 3-104 imposes the following responsibilities on the lawyer employing the nonlawyer:

DR 3-104 Nonlawyer Personnel.

(A) A lawyer or law firm may employ nonlawyer personnel to perform delegated functions under the direct supervision of a licensed attorney, but shall not permit such nonlawyer personnel to (i) counsel clients about legal matters, (ii) appear in court or in proceedings which are a part of the judicial process (except as permitted by rule 31.15 or rules of this or other courts or agencies), or (iii) otherwise engage in the unauthorized practice of law.

(B) A lawyer or law firm employing nonlawyer personnel shall not permit any representation that such nonlawyer is a member of the Iowa Bar.

(C) A lawyer or law firm employing nonlawyer personnel shall exercise care to ensure compliance by the nonlawyer personnel with all applicable provisions of the Code of Professional Responsibility. The initial and continuing relationship with the client must be the responsibility of the employing lawyer or law firm.

(D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing lawyer or law firm and will be merged into the lawyer's completed work product. A lawyer shall examine, supervise and be responsible for all work delegated to nonlawyer personnel.

(E) The lawyer or law firm employing nonlawyer personnel shall not permit such nonlawyer to communicate with clients or the public, including lawyers outside the firm, without first disclosing the nonlawyer's status.

Of further note is Iowa Code Section 231.4-13 (2002), which defines *legal assistance* to include “counseling or other appropriate assistance by a paralegal . . . under the supervision of any attorney.”

Kansas

Definition:

A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.

How Defined: Bar Association

Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas,
1998, p. 2

Mandate attempted: No

Kansas Bar Association
1200 SW Harrison
Topeka, KS 66612-1806
Phone: (785) 234-5696
Fax: (785) 234-3813
Web Address: <http://www.ksbar.org>

Paralegal Associations:

NALA Affiliate: Kansas Association of Legal Assistants (KALA)
Post Office Box 47301
Wichita, KS 67201
Phone: (316) 291-9711
Email: dthomas@foulston.com
Web: <http://www.ink.org/public/kala>

Heartland Association of Legal Assistants (HALA)
Post Office Box 12413
Overland Park, KS 66282-2413
Phone: (913) 477-7625
Fax: (913) 477-7639
Web: <http://www.accesskansas.org/hala>

NFPA Affiliates: Kansas Paralegal Association (KPA)
Post Office Box 1675
Topeka, KS 66601
Email: ksparalegals@ink.org
Web: <http://www.accesskansas.org/ksparalegals>

Discussion:

Kansas Bar Association's (1998) *Guidelines for the Utilization of Legal Assistants/Paralegals in Kansas* provide the current definition of *legal assistant/paralegal* for the state. "The Kansas Bar Association . . . accepts the American Bar Association's definition" (Kansas Bar Association, 1998). In addition, the use of paraprofessional assistants in law offices was recognized by the Supreme Court of Kansas in the case of *In re Wilkinson*, 251 Kan. 546, 834 P.2d 1356 (1992). The Court stated:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. [Although] MRPC 5.3 refers to "nonlawyer assistants," the term is not defined. The Comment specifically mentions an attorney can hire assistants . . ., including secretaries, investigators, law student interns, and paraprofessionals. (p. 549)

As noted in the Court's opinion, although the Model Rules Professional Conduct (MRPC) concerns an attorney's responsibility for nonlawyer assistants and mentions the use of assistants, the rule itself does not define *assistant*. Model Rule of Professional Conduct 5.3 is found in Kansas Court Rules as Kansas Supreme Court Rule 5.3:

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Kentucky

Definition:

[A] paralegal is a person under the supervision and direction of a licensed lawyer, who may apply knowledge of law and legal procedures in rendering direct assistance to lawyers engaged in legal research; design, develop or plan modifications or new procedures, techniques, services, processes or applications; prepare or interpret legal documents and write detailed procedures for practicing in certain fields of law; select, compile and use technical information from such references as digests, encyclopedias or practice manuals; and analyze and follow procedural problems that involve independent decisions.

How Defined: Court

Ky. Sup. Ct. R. 3.700

Mandate attempted: No

Kentucky Bar Association
514 West Main Street
Frankfort, KY 40601-1883
Phone: (502) 564-3795
Fax: (502) 564-3225
Web Address: <http://www.kybar.org>

Paralegal Associations:

NALA Affiliate: Western Kentucky Paralegals (WKP)
Post Office Box 2895
Paducah, KY 420002-2895

NFPA Affiliate: Greater Lexington Paralegal Association, Inc. (GLPA)
Post Office Box 574
Lexington, KY 40586
Email: Lexington@paralegals.org

Independent: Kentucky Paralegal Association (KPA)
Post Office Box 2675
Louisville, KY 40201-2675
Email: noc@louisville.net
Web: <http://www.kypa.org>

Discussion:

Kentucky was one of the first states to address the utilization of paralegals (NALA, 1999c). The Kentucky Supreme Court adopted Rule 3.700. *Provisions relating to paralegals.* on

September 4, 1979, making Kentucky the first state to have adopted such a rule by its highest court (NALA, 1999c). Kentucky Supreme Court Rule 3.700, now revised, supplies a *preliminary statement* and *purpose* in addition to the definition:

Preliminary statement. The availability of legal services to the public at a price it can afford is a goal to which the bar is committed, and one which finds support in Canons 2 and 8 of the Code of Professional Responsibility. The employment of paralegals furnishes a means by which lawyers may expand the public's opportunity for utilization of their services at a reduced cost.

Purpose. Rapid growth in the employment of paralegals increases the desirability and necessity of establishing guidelines for the utilization of paralegals by the legal community. This rule is not intended to stifle the proper development and expansion of paralegal services, but to provide guidance and ensure growth in accordance with the Code of Professional Responsibility, statutes, court rules and decisions, rules and regulations of administrative agencies, and opinions rendered by committees on professional ethics and unauthorized practice of law.

While the responsibility for compliance with standards of professional conduct rests with members of the bar, a paralegal should understand those standards. It is, therefore, incumbent upon the lawyer employing a paralegal to inform him of the restraints and responsibilities incident to the job and supervise the manner in which the work is completed. However, the paralegal does have an independent obligation to refrain from illegal conduct. Additionally, and notwithstanding the fact that the Code of Professional Responsibility is not binding upon lay persons, the very nature of a paralegal's employment imposes an obligation to refrain from conduct which would involve the lawyer in a violation of the Code.

Kentucky Paralegal Association's (KPA) Board of Directors and Professional Development Committee (PDC) has proposed a voluntary certification program for paralegals in the state (Hawley, 2001). Hawley advised that the KPA Board and PDC, after reviewing other states' plans, recommended that Kentucky's certification include mandatory educational requirements, a written examination, and participation in continuing paralegal education. Brunner (2002a) reported that the KPA has created an independent body known as Certified Kentucky Paralegal Program, Inc. (CKPP). This entity is charged with "developing, maintaining and administering the voluntary . . . CKP exam" (p. 16). The proposal for voluntary state certification suggests that, as a Certified Kentucky Paralegal (CKP), one must agree to be subject

to the KPA professional disciplinary procedures that include revocation or suspension (Hawley). Although the KPA is not working with the Kentucky Bar Association on the certification proposal, the rules of professional conduct are expected to match those of the Bar (Hawley). Barry Sears, 2002 chair of KPA Public Relations Committee, (personal communication, August 14, 2002) advised that, at present, the proposal has not been finalized and is not available to the public.

Attorneys' responsibilities regarding nonlawyer assistants are currently set forth in Kentucky Supreme Court Rule 5.3:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer only if:
 - (1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT: Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Louisiana

Definition: None

Mandate attempted: No

Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130-0304
Phone: (504) 566-1600
Fax: (504) 566-0930
Web Address: <http://www.lsba.org>

Paralegal Associations:

NALA Affiliates: Louisiana State Paralegal Association (LSPA)
Post Office Box 219
Baton Rouge, LA 70821-0219
Email: DPrather@la-paralegals.org
Web: <http://www.la-paralegals.org>

Northwest Louisiana Paralegal Association (NLPA)
333 Texas Street
Shreveport, LA 71101-3673

NFPA Affiliate: New Orleans Paralegal Association (NOPA)
Post Office Box 30604
New Orleans, LA 70190
Email: neworleans@paralegals.org
Web: <http://www.paralegals.org/NewOrleans>

Discussion:

Louisiana State Paralegal Association, at its 1992 annual meeting, adopted a resolution endorsing voluntary state certification as a means of establishing professional standards (Louisiana State Paralegal Association, n.d.). Subsequently, a state voluntary certification credential was developed that required the applicant to sit for the both a state examination and the national Certified Legal Assistant (CLA) examination (Louisiana State Paralegal Association). To be a viable candidate, the applicant must either a valid CLA credential or meet one of the alternate eligibility requirements of the CLA examination.

Louisiana Rules of Court set forth attorneys' responsibilities regarding nonlawyer assistants (La. St. Bar Art. XVI, R. 5.3):

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Maine

Definition:

“Paralegal” and “legal assistant” mean a person, qualified by education, training or work experience, who is employed or retained by an attorney, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which an attorney is responsible.

How Defined: Statute

Me. Rev. Stat. Ann. tit. 4, § 921.1 (West 2001)

Mandate attempted: No

Maine State Bar Association

Post Office Box 788

Augusta, ME 04332-0788

Phone: (207) 622-7523

Fax: (207) 623-0083

Web Address: <http://www.mainebar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: None

Discussion:

In addition to the statutory definition, the subsequent statute, Maine Revised Statutes Annotated, Title 4, Section 922 (2001), places a restriction on the use of the title *paralegal* or *legal assistant* and assigns a penalty in subsection 2. “A person may not use the title ‘paralegal’ or ‘legal assistant’ unless the person meets the definition in Section 921, subsection 1” (§ 922.1). The civil fine consists of a violation and forfeiture of not more than \$1000 (§ 922.2).

The bill setting forth the definition of *paralegal/legal assistant* was originally presented to the Maine House of Representatives in 1997 (Gaige, 2002; Me. H. 0861, 1997). According to Gaige, both proponents and opponents of the bill testified that Maine had no standards, no licensing, no regulation, and no definition for paralegals. Gaige reported that Representative David Madore requested the Maine State Association for Legal Assistants (MSALA) to draft a

revised bill after the Maine State Bar Association and Maine Supreme Judicial Court failed to address the concerns of the Judiciary Committee. The revised version, designated as Maine House Bill 0517 (1999) was signed into law in January of 1999 (Gaige, 2002; Me. Rev. Stat. Ann. tit. 4, §§ 921, 922; West 2001; NALA, 1999c).

Maine has in place statutory language to address *Sunrise Review Procedures* for professions and occupations that propose regulation of an unregulated profession:

Any professional or occupation group or organization, any individual or any other interested party . . . that proposes regulation or any unregulated professional or occupational group . . . shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. . . . The preauthorization criteria [includes] a description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of association, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group.

(Me. Rev. Stat. Ann. tit. 32, § 60-J, West 2001)

Maine Bar Rule 3.13 § (c) addresses lawyers' responsibilities regarding non-lawyer assistants:

3.13 § (c) Responsibilities Regarding Non-lawyer Assistants.

With respect to a non-lawyer employed or retained by or associated with a lawyer:

- (1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (2) A lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (3) A lawyer shall be responsible for conduct of such a person that would be a violation of the Code of Professional Responsibility if engaged in by a lawyer if:
 - (i) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (ii) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Maryland

Definition:

A Legal Assistant is a person, qualified through education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity in a capacity or function which involves the performance, *under the ultimate direction and supervision of an attorney*, of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

How Defined: Court

Attorney Grievance Comm'n v. Hallmon, 343 Md. 390, 397, 681 A.2d 510, 514 (1996)

Mandate attempted: No

Maryland State Bar Association
520 West Fayette Street
Baltimore, MD 21201
Phone: (410) 685-7878
Fax: (410) 685-1016
Web Address: <http://www.msba.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Maryland Association of Paralegals, Inc. (MAP)
550 M Ritchie Highway PMB# 203
Severna Park, MD 21146
Phone: (410) 576-2252
Email: Maryland@paralegals.org
Web: <http://www.paralegals.org/Maryland>

Discussion:

The Supreme Court of Maryland, in *Attorney Grievance Comm'n v. Hallmon*, 343 Md. 390, 681 A.2d 510 (1996), not only set forth a definition of *legal assistant* but also advised what paralegals might not do:

Law clerks and paralegals perform a variety of services for attorneys but they may not give legal advice, accept cases, set fees, appear in court, plan strategy, make legal decisions, or chart the direction of a case. . . . The American Bar Association

similarly stresses the importance of attorney supervision of paraprofessionals in its definition of a legal assistant. (p. 514)

Maryland Rule 5.3 describes lawyers' responsibilities regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action..

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Massachusetts

Definition: None

Mandate attempted: No

Massachusetts State Bar Association
20 West Street
Boston, MA 02111
Phone: (617) 338-0500
Fax: (617) 542-7947
Web Address: <http://www.massbar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliates: Central Massachusetts Paralegal Association (CMAP)
Post Office Box 444
Worcester, MA 01614
Email: CentralMassachusetts@paralegals.org

Massachusetts Paralegal Association (MPA)
Post Office Box 205
Georgetown, MA 01833
Email: Massachusetts@paralegals.org

Western Massachusetts Paralegal Association (WMAP)
Post Office Box 30005
Springfield, MA 01103
Email: WesternMassachusetts@paralegals.org
Web: <http://www.paralegals.org/WesternMassachusetts>

Discussion:

Annotated Laws of Massachusetts Supreme Judicial Court Rule 3:07, Rule of

Professional Conduct 5.3 sets forth lawyers' responsibilities regarding nonlawyer assistants:

Rule 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the

professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

In addition, Massachusetts Bar Association Opinion No. 00-4 (2000) stated that a lawyer may not delegate to a paralegal any tasks that cannot be performed competently by the paralegal even though a client may request the paralegal to perform the work. For example, in insurance defense matters, even though the limitations imposed by insurer litigation guidelines require that particular case-related tasks be performed by paralegals, it is the lawyer who must make the ultimate decision as to whether the task can be performed competently by the paralegal.

Michigan

Definition:

Any person currently employed or retained by a lawyer, law office, governmental agency or other entity engaged in the practice of law, in a capacity or function which involves the performance under the direction and supervision of an attorney of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the task, and which work is not primarily clerical or secretarial in nature, and (a) who has graduated from an ABA approved program of study for legal assistance and has a baccalaureate degree; or (b) has received a baccalaureate degree in any field, plus not less than two years of in-house training as a legal assistant; or (c) who has received an associate degree in the legal assistant field, plus not less than two years of in-house training as a legal assistant; or (d) who has received an associate degree in any field and who has graduated from an ABA approved program of study for legal assistants, plus not less than two years of in-house training as a legal assistant; or (e) who has a minimum of four (4) years of in-house training as a legal assistant.

How Defined: Bar Association

Bylaws of the State Bar of Michigan, Art. 1, § 6 (1993)

Mandate attempted: No

State Bar of Michigan
306 Townsend Street
Lansing, MI 48933-2083
Phone: (800) 968-1442
Fax: (517) 482-6248
Web Address: <http://www.michbar.org>

Paralegal Associations:

NALA Affiliate: Legal Assistants Association of Michigan, Inc. (LAAM)
Post Office Box 1453
East Lansing, MI 48826
Email: laam@laamnet.org
Web: <http://www.laamnet.org>

NFPA Affiliate: The Michiana Paralegal Association, Inc. (MPA)
Post Office Box 11458
South Bend, IN 46634
Email: Michiana@Paralegals.org
Web: <http://www.paralegals.org/Michiana>

Discussion:

The State Bar of Michigan has established a Legal Assistants Section with guidelines for membership identical to those stated in the Bar's Bylaws (State Bar of Michigan, n.d.). The Bar approved the *Guidelines for the Utilization of Legal Assistant Services* in April of 1993. Legal assistants in Michigan are generally treated as expansions of their supervising attorneys:

A lawyer may ethically assign responsibility to a legal assistant for the performance of tasks relating to the representation of a client and the law firm's delivery of legal services, commensurate with the experience and training of the legal assistant, and where the lawyer directly supervises the legal assistant and review the legal assistant's work product before it is communicated outside the law firm, provided that:

- a. The legal assistant's participation as a nonlawyer is clear.
- b. The legal assistant does not convey to persons outside the law firm the legal assistant's opinion regarding the applicability of laws to the particular legal situation of another, the legal effect of acts or omissions of another, or the legal rights, responsibilities, or obligations of another person regarding their particular legal matter.
- c. Drafts of legal documents prepared by a legal assistant are conveyed over the signature of the lawyer.
- d. The legal assistant does not appear on behalf of any person or entity in proceedings before state or federal courts, administrative agencies, and tribunals, and including participation on behalf of another in depositions, discovery, and settlement negotiation, except to the extent that a nonlawyer is authorized by law to represent the interests of another person or entity and the lawyer has obtained the other person's or entity's consent to the legal assistant's participation as representative in those proceedings. (State Bar of Michigan, n.d. Guideline 2)

Guideline 8 states that a "lawyer who employs a legal assistant should facilitate the legal assistant's participation in appropriate continuing education" (State Bar of Michigan, n.d.).

In *State Bar v. Cramer*, 399 Mich. 116, 249 N.W.2d 1 (1976), the Supreme Court held that although nonlawyers could provide legal forms and instructions to clients, they were not authorized to provide legal advice tailored to the situation of another. Paralegals were allowed, under this ruling, to discuss with their supervisory attorney the admissibility of evidence and

research and, in addition, were authorized to communicate with clients by conveying the lawyer's advice only upon approval by the lawyer.

Michigan Rule of Professional Conduct 5.3 sets forth lawyers' responsibilities regarding nonlawyer assistants:

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed by, retained by, or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Minnesota

Definition: None

Mandate attempted: No

Minnesota State Bar Association
600 Nicollet Mall #380
Minneapolis, MN 55402
Phone: (612) 333-1183
Fax: (612) 333-4927
Web Address: <http://www.mnbar.org>

Paralegal Associations:

NALA Affiliate: Red River Valley Legal Assistants (RRVLA)
46585 405th Avenue
Perham, MN 56573

NFPA Affiliate: Minnesota Paralegal Association (MPA)
1711 W. County Rd. B. #300N
Roseville, MN 55113
Phone: (651) 633-2778
Fax (651) 635-0307
Email: info@mnparalegals.org
Web: <http://www.mnparalegals.org>

Discussion:

In Minnesota, although no attempt to mandate paralegals has occurred, there was an attempt to designate a *specialized legal assistant* by creating a specialty license (Dover, 2002).

In 1991, Senate Bill 520 was introduced that requested the Supreme Court to adopt rules governing the delivery of legal services by licensed nonlawyers and to amend Minnesota Statutes Section 481.02, Subd. 3 (Minn. Sup. Ct. Rep. 940338, 1994; Shimko-Herman, 1991). The Bill included language to permit “the delivery of legal services by a specialized legal assistant in accordance with a specialty license” (Subd. 3. (14)). The amended bill, when passed, was reduced to a feasibility study to be conducted by an appointed Specialized Legal Assistants

Study Committee (Minn. Sup. Ct. Rep. 940338; Shimko-Herman). Signed into law on June 3, 1991, Senate Bill 520 stated:

The supreme court shall review the feasibility of the delivery of legal services by specialized legal assistants, and shall prepare a report for the legislature by December 1, 1993. In preparing the report, the supreme court should consult with licensed attorneys, legal assistants, representatives of the educational community for legal assistants. . . . The report should include at least the following:

- (1) whether the delivery of legal services through specialized legal assistants is in the best interest of consumers of legal services;
- (2) areas and scope of practice of specialized legal assistants;
- (3) circumstances under which a specialty license will be required;
- (4) qualifications for legal assistants applying for a specialty license;
- (5) examination and specialty license requirements and fees;
- (6) limits and conditions of practice under a specialty license including malpractice insurance requirements;
- (7) continuing legal education requirements;
- (8) rules of professional conduct and responsibility;
- (9) procedures for filing, investigating, and resolving complaints and disciplinary actions against specialized legal assistants; and
- (10) maintenance and classification of records relating to specialized legal assistants. (§ 2)

The feasibility study was completed and submitted to the Court on February 18, 1994 (Minn. Sup. Ct. Rep. 940338, 1994). The Committee quoted Minnesota Statutes Section 214.001, subs. 2 and 3 (1992) and stated that the Minnesota statutes provided that “no regulation shall be imposed upon any occupation unless retained for the safety and well being of the citizens of the state” (p. 10). The Committee continued:

This statute indicates that the purpose of a professional license requirement is to protect the citizens of the state by limiting entry into a profession to those people who have demonstrated that they possess at least a minimum level of skill and knowledge related to the practice of the profession. License requirements are intended to protect the service consuming public from harm that can be caused by unqualified practitioners. (p. 11)

As noted by Dover (2002), the feasibility study report concluded that licensing legal assistants does not fit into the “analytic framework created by statute because the practice of law is already a regulated profession” (p. 11). The Committee reported that the license requirement

would increase the cost of legal services by limiting the number of people who can perform a task. Dover pointed out that the Committee also identified the fact that a licensure mechanism for legal assistants would require the creation of a regulatory system similar to that of lawyers, with the same expense and complexity. The report stated that this would only be justified if it resulted in significantly less expensive costs to consumers of legal services. The Supreme Court, after reviewing the report, concluded that an independent specialized legal assistant category was not feasible (Minn. Ct. Rep. 940338, 1994, Appendix I). Thus, the matter was terminated.

Currently, the Minnesota Rules of Professional Conduct are the only legislation that addresses nonlawyer assistants. Rule 5.3 states lawyers' responsibilities:

5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Mississippi

Definition: None

Mandate attempted: No

The Mississippi Bar
Post Office Box 2168
Jackson, MS 39225-2168
Phone: (601) 948-4471
Fax: (601) 355-8635
Web Address: <http://www.msbar.org>

Paralegal Associations:

NALA Affiliate: Mississippi Association of Legal Assistants, Inc. (MALA)
Post Office Box 996
Jackson, MS 39205
Web: <http://www.mslawyer.com/mala>

NFPA Affiliate: None

Discussion:

Rule 5.3 of the Mississippi Rules of Professional Conduct sets forth lawyers' responsibilities regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding non-lawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries,

investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Missouri

Definition:

The term "*paralegal*," as used in these guidelines, shall mean a person qualified through education in legal studies, training and/or work experience in a law environment, who is employed or retained by a lawyer, law office, corporate in-house counsel, government agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work that, for the most part, requires a sufficient knowledge of legal concepts that, absent the paralegal, the attorney would perform. For purposes of these Guidelines, the term "legal assistant" shall be considered synonymous with the term "paralegal."

How Defined: Bar Association

Missouri Bar Guidelines for Practicing with Paralegals, 1997, p. 5

Mandate attempted: No

The Missouri Bar
Post Office Box 119
Jefferson City, MO 65102
Phone: (573) 635-4128
Fax: (573) 635-2811
Web Address: <http://www.mobar.org>

Paralegal Associations:

NALA Affiliate: St. Louis Association of Legal Assistants (SLALA)
Post Office Box 69218
St. Louis, MO 63169-0218
Web: <http://www.slala.org>

NFPA Affiliate: Kansas City Paralegal Association (KCPA)
1912 Clay Street
North Kansas City, MO 64116
Email: KansasCity@paralegals.org
Web: <http://paralegals.org/KansasCity>

Independent: Missouri Paralegal Association (MPA)
Post Office Box 1016
Jefferson City, MO 65102-1016
Web: <http://www.missouriparalegalassoc.org>

Mid-Missouri Paralegal Association (MMPA)
Post Office Box 1291
Jefferson City, MO 65102

Southwest Missouri Paralegal Association (SMPA)
1154 S. Willow Lane
Springfield, MO 65804

Discussion:

The Missouri Bar has adopted guidelines for practicing with paralegals that set forth the definition of *paralegal* and also describe lawyers' responsibilities for paralegal conduct (Missouri Bar, n.d.). The guidelines provide standards for lawyers to employ paralegals in accordance with the Missouri Rules of Professional Conduct, statutes, court rules and decisions, rules and regulations of administrative agencies, opinions rendered by the attorney general, and committees on professional ethics and the unauthorized practice of law (Missouri Bar, n.d.). The guidelines further describe what constitutes *unauthorized practice* because, as noted by the Bar, case law does not provide enough guidance in defining where the actions of a paralegal cross the line from assisting a lawyer in the practice of law to actually performing acts that would violate the *unauthorized practice* of law statute. Regardless of whether a paralegal is a direct employee of the lawyer or an independent contractor the paralegal acts for the lawyer in the rendition of the lawyer's professional service (Missouri Bar, n.d.). If a paralegal engages in conduct that, if performed by a lawyer, would constitute a violation of the Rules of Professional Conduct, then the lawyer would be responsible (Missouri Bar, n.d.). Thus, the *Guidelines for Practicing with Paralegals* supplement and clarify the principles of the Missouri Rules of Professional Conduct.

Missouri Rule of Professional Conduct 4-5.3 details lawyers' responsibilities regarding nonlawyer assistants:

Rule 4-5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:
(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Bemiss (2002a) reported that the Missouri Paralegal Association (MPA) is in the process of considering a mandatory licensing proposal. Jennifer Crisp, MPA representative, (personal communication, September 30, 2002) advised that although a roundtable discussion regarding mandatory licensure has occurred, no formal proposals have been drafted.

Montana

Definition:

"Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

How Defined: Statute

Mont. Code Ann. § 37-60-101 (2002)

Mandate attempted: No

The State Bar of Montana

Post Office Box 577

Helena, MT 59624

Phone: (406) 442-7660

Fax: (406) 442-7763

Web Address: <http://www.montanabar.org>

Paralegal Associations:

NALA Affiliate: Montana Association of Legal Assistants (MALA)
Post Office Box 9016
Missoula, MT 59807-9016
Email: mala@montana.com
Web: <http://www.malanet.org>

NFPA Affiliate: None

Discussion:

The State of Montana set forth its definition of *paralegal* or *legal assistant* under Title 37 – *Professions and Occupations* when it enacted legislation to license private investigators and parole officers because some paralegals were functioning in this capacity (Shimko-Herman, 1991). Montana Code Annotated Section 37-60-105(4)(b) (2002) specifically exempts paralegals from license requirements provided they are employed by a law office, governmental agency, or other entity.

The By-Laws of the State Bar of Montana (1998) provide for a voluntary paralegal/legal assistant associate membership with the Bar (Art. I, § 1). The By-Laws further mandate that the Bar maintain a paralegal/legal assistant section and state:

There shall be a paralegal/legal assistant section of the State Bar of Montana. Any member of the State Bar may be a member of this section. Any paralegal/legal assistant who satisfies the membership requirements of the paralegal/legal assistant section By-Laws may elect to become a member of this section. (Art. X, § 1)

Montana Professional Conduct Rule 5.3 establishes lawyers' responsibility for nonlawyer assistants:

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligation of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligation of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

It is also interesting to note that in Ethics Opinion 00009, the State Bar of Montana (2000) stated:

The term "Legal Assistant" appears to be coming into general use in connoting a lay assistant to a lawyer, . . . and a lawyer often delegates tasks to clerks, secretaries, and other lay persons . . . and sets forth general guidelines whether the "legal assistant" be a legal secretary, paralegal or law clerk. (p. 1)

As is noted in this opinion, there are times when, in certain contexts, *legal assistant* means *lay assistant*.

Nebraska

Definition:

[A] support person shall mean any person, other than a lawyer, who is associated with a lawyer or a law firm and shall include but is not necessarily limited to the following: law clerks, paralegals, legal assistants, secretaries, messengers, and other support personnel employed by the law firm. Whether one is a support person is to be determined by the status of the person at the time of the participation in the representation of the client.

How Defined: Court

Neb. Code Prof. Resp. DR5-109(A)

Mandate attempted: No

Nebraska State Bar Association

635 South 14th Street

Post Office Box 81809

Lincoln, NE 68501

Phone: (402) 475-7091

Fax: (402) 475-7098

Web Address: <http://www.nebar.com>

Paralegal Associations:

NALA Affiliate:

Nebraska Association of Legal Assistants (NeALA)

Post Office Box 24943

Omaha, NE 68124

Web: <http://www.neala.org>

NFPA Affiliate:

Rocky Mountain Paralegal Association (RMPA)

Post Office Box 481864

Denver, CO 80248-1864

Phone: (303) 370-9444

Email: webmaster@rockymtnparalegal.org

Web: <http://rockymtnparalegal.org>

Discussion:

Nebraska Rules of Court, Code of Professional Responsibility Disciplinary Rule 5-109 sets forth a definition of *support person*, which includes *paralegals* and *legal assistants*.

Lawyers' responsibilities regarding support personnel in a law office are also set forth in DR 5-109:

(B) A lawyer shall not knowingly allow a support person to participate or assist in the representation of a current client in the same or a substantially related matter in which another lawyer or firm with which the support person formerly was associated had previously represented a client:

(1) Whose interests are materially adverse to the current client; and

(2) About whom the support person has acquired confidential information that is material to the matter, unless the former client consents after consultation. The support person shall be considered to have acquired confidential information that is material to the matter unless the support person demonstrates otherwise.

(C) If a support person, who has worked on a matter, is personally prohibited from working on a particular matter under subsection (B), the lawyer or firm with which that person is presently associated will not be prohibited from representing the current client in that matter if:

(1) The former client consents, or

(2) There is no genuine threat that confidential information of the former client will be used with material adverse effect on the former client because the confidential client information communicated to the support person while associated with the former firm is not likely to be significant in the current client's case.

Nevada

Definition:

A legal assistant (also known as a paralegal) is a person, qualified through education, training or work experience, who is retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such an assistant, the attorney would perform the task.

How Defined: Bar Association

ByLaws of the Legal Assistants Division of the State Bar of Nevada, § 3 (2000)

Mandate attempted: No

State Bar of Nevada
600 East Charleston Boulevard
Las Vegas, NV 89104
Phone: (702) 382-2200
Fax: (702) 385-2878
Web Address: <http://www.nvbar.org>

Paralegal Associations:

NALA Affiliates: Clark County Organization of Legal Assistants, Inc.
(CCOLA)
4955 South Durango, Suite 180
Las Vegas, NV 89113

Sierra Nevada Association of Paralegals
Post Office Box 2670
Reno, NV 89505-2670

NFPA Affiliate: Paralegal Association of Southern Nevada (PASN)
2300 W. Sahara Avenue, #1000
Las Vegas, NV 89102
Email: SouthernNevada@paralegals.org
Web: <http://www.paralegals.org/Members/Nevada.html>

Discussion:

The State Bar of Nevada (2000) adopted *Bylaws of the Legal Assistants Division* on November 11, 1994. Article I, Section 3 of the Bylaws is entitled *Definition of a Legal*

Assistant. The stated purpose of the Legal Assistants Division is to “enhance legal assistants’ participation in the administration of justice, professional responsibility and public services in cooperation with the State Bar of Nevada” (State Bar of Nevada, 2000, p. 1). According to Article II, membership in this voluntary organization is open to “any person employed in the State of Nevada, not admitted to the practice of law in Nevada, who has, through education, training, or experience, demonstrated knowledge of the legal system, legal principles and procedures, and who has satisfied at least one of the criteria” (§ 1, p. 1).

In *Greenwell v. State Bar of Nevada*, 108 Nev. 602, 836 P.2d 70 (1992), the Nevada Supreme Court ordered the Bar to formulate rules to allow non-lawyers to provide specific simple legal services:

The permitted services are to be specifically defined by the rules, and the activities of non-lawyers are not to exceed the specific definitions. Further, the State Bar has been given authority to train and certify non-lawyers to provide simple legal services. The Bar has been asked for suggestions as to how the training and certification of these “paralegals” is to be organized and administered. (pp. 604-605)

The result of this ruling was the formation of The Legal Assistants Division of the State Bar of Nevada (State Bar of Nevada, 2000). According to Grimes (2001), the Bar has considered a voluntary state certification program for paralegals who are already certified by either NALA or NFPA. Although certification was mentioned in the *Greenwell* ruling, it was not mandatory. The matter remains under study (Grimes).

Nevada Supreme Court Rule 187 describes lawyers’ responsibilities regarding nonlawyer assistants:

RULE 187. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:
1. A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

2. A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
3. A lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (a) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (b) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

New Hampshire

Definition:

The term “legal assistant” shall mean a person not admitted to the practice of law in New Hampshire who is an employee of or an assistant to an active member of the New Hampshire Bar, a partnership comprised of active members of the New Hampshire Bar or a Professional Association within the meaning of RSA chapter 294-A, and who, under the control and supervision of an active member of the New Hampshire Bar, renders services related to but not constituting the practice of law.

How Defined: Court

N.H. Sup. Ct. R. 35.5.3 (2) (C)

Mandate attempted: No

New Hampshire Bar Association

112 Pleasant St.

Concord, NH 03301

Phone: (603) 224-6942

Fax: (603) 224-2910

Web Address: <http://www.nhbar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Paralegal Association of New Hampshire (PANH)
Post Office Box 728
Manchester, NH 03105-0728
Email: us@PANH.org
Web: <http://www.panh.org>

Discussion:

Administrative Rule 35 of the Rules of the Supreme Court provides *Guidelines for the Utilization by Lawyers of the Services of Legal Assistants under the New Hampshire Rules of Professional Conduct*. The definition of *legal assistant* is set forth in paragraph (2) (C). The *Comment* section under that court rule states:

This definition is intended to cover those lay persons often designated as paralegals, legal assistants, law specialists, law clerks, law students, etc. It is intended to cover all lay persons who are employed by or associated with a

member of the Bar but who are not admitted to practice law in the State of New Hampshire. For purposes of these Guidelines, the term "legal assistant" is intended to be synonymous with the terms "nonlawyer assistant" and "nonlawyer" for purposes of the New Hampshire Rules of Professional Conduct and, in particular, Rule 5.3 of the Rules and the Comments pertaining thereto.

Rule 5.3 referred to in the Guidelines is New Hampshire Supreme Court Rule 35.5.3 that sets forth the responsibilities of an attorney regarding nonlawyer assistants. Rule 35.5.3 exactly parallels the language set forth in Rule 5.3 of the New Hampshire Rules of Professional Conduct:

5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

ABA Model Code Comments

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

New Jersey

Definition:

[A paralegal is] a person qualified through education, training or work experience; is employed or retained by a lawyer, law office, government agency, or other entity; works under the ultimate direction and supervision of an attorney; performs specifically delegated legal work, which, for the most part, requires a sufficient knowledge of legal concepts; and performs such duties that, absent such an assistant, the attorney would perform such tasks.

How Defined: Court

In re Opinion No. 24, 128 N.J. 114, 125, 607 A.2d 962 (1992)

Mandate attempted:	Yes
Form:	Licensure
By Whom:	Special Committee of the New Jersey Supreme Court
Status:	Halted

New Jersey State Bar Association
New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901-1520
Phone: (732) 249-5000
Fax: (732) 249-2815
Web Address: <http://www.njsba.com>

Paralegal Associations:

NALA Affiliate:	Legal Assistants Association of New Jersey (LAANJ) Post Office Box 142 Caldwell, NJ 07006 Web: http://www.geocities.com/CapitolHill/2716/old.html
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NFPA Affiliate:	South Jersey Paralegal Association (SJPA) Post Office Box 355 Haddonfield, NJ 08033 Email: SouthJersey@paralegals.org Web: http://paralegals.org/SouthJersey
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Discussion:

In 1989, the New Jersey Supreme Court became involved in the issue of licensure of paralegals when its Committee on the Unauthorized Practice of Law began to investigate the appropriateness of nonlawyers delivering legal services to the public (Shimko-Herman, 1991).

In 1990, the New Jersey Supreme Court Committee on the Unauthorized Practice of Law concluded, in Advisory Opinion No. 24, that independent paralegals were functioning outside the supervision of attorneys, that such actions constituted the *unauthorized practice of law*, and a mandatory licensure procedure was necessary (*In re Opinion No. 24*, 128 N.J. 114, 607 A.2d 962, 1992). The Court's opinion stated that there is no distinction between an independent paralegal and a paralegal employed by a law firm with regard to their obligations. The Court further noted:

[P]aralegals are capable of carrying out many tasks . . . that might otherwise be performed by a lawyer. . . . Much such work lies in a gray area of tasks that might appropriately be performed either by an attorney or a paralegal. . . . Rule 4:42-9(b) implicitly recognizes that attorneys use paralegals. . . . That Rule's definition of "legal assistant" is identical that to the ABA's. (pp. 124-126)

Thus, the opinion included the ABA's definition of *paralegal* and made reference to the rule that, in New Jersey, defined *paraprofessional* services:

"[P]araprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks which are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform. (N.J. Ct. R., 1969 R. 4:42-9(b))

The opinion, in addition to providing a definition, advised that the New Jersey Supreme Court had adopted the ABA's Rules of Professional Conduct and that New Jersey Court Rule, Rule of Professional Conduct 5.3, sets forth the responsibilities of attorneys regarding nonlawyer assistants:

RPC 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) every lawyer or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the

professional obligations of the lawyer; and
(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
(1) the lawyer orders or ratifies the conduct involved;
(2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or
(3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

The opinion also noted that “[n]either the state of New Jersey, any bar association, nor any organization or affiliation of paralegals or legal assistants provides for a licensing procedure or any other procedure to regulate and control the identity, training and conduct of those who engage in the work.” (*In re Opinion No. 24*, p. 128). The New Jersey Supreme Court further advised that in other states, bar associations, paralegal organizations, and court rules have begun to regulate attorneys’ use of paralegals. As a result, the Court convened a Committee on Paralegal Education and Regulation to “study the practice of paralegals and make recommendations” (*In re Opinion No. 24*, p. 128). After six years of study, the Committee filed its report with the Court recommending mandatory licensure of paralegals (New Jersey Supreme Court Committee on Paralegal Education and Regulation, 1999). The Court reviewed the report and determined that there was no need for mandatory licensure, thus halting a licensure recommendation from its own committee (New Jersey Supreme Court Committee on Paralegal Education and Regulation).

According to Dorothy Secol, Co-Chairman of the New Jersey State Bar Paralegal Committee, (personal communication, August 26, 2002) the New Jersey State Bar Association is currently involved in the process of developing a paralegal code of conduct but the details are not yet available to the public.

New Mexico

Definition:

A “legal assistant” is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of a specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

How Defined: Court

N.M. R. Gov. Legal Asst. Ser. R. 20-102A.

Mandate attempted: No

State Bar of New Mexico
Post Office Box 25883
Albuquerque, NM 78125
Phone: (505) 797-6000
Fax: (505) 828-3765
Web Address: <http://www.nmbar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: None

Bar Sponsored: Legal Assistants Division of the State Bar of New Mexico
Post Office Box 1923
Albuquerque, NM 78125
Phone: (505) 248-1285
Web: <http://www.nmbar.org/divisions/legalassistdivision/LAD.htm>

Discussion:

Rule 20-102 of New Mexico Rules Governing Legal Assistant Services became effective on April 1, 1993. Subsequent amendments have ensued, but the current definition of *legal assistant* is found in Section A. of Rule 20-102. Section B. of the rule defines what constitutes the *practice of law*. Section B. purports to advise legal assistants of what actions to avoid:

- B. practice of law, insofar as court proceedings are concerned, includes:
- (1) representation of parties before judicial or administrative bodies;
 - (2) preparation of pleadings and other papers, incident to actions and special proceedings;
 - (3) management of such actions and proceedings; and
 - (4) noncourt-related activities, such as:
 - (a) giving legal advice and counsel;
 - (b) rendering a service which requires use of legal knowledge or skill; and
 - (c) preparing instruments and contracts by which legal rights are secured.
- (R. 20-102B)

The *Notes* section of Rule 20-102 states:

The definition of "legal assistant" is intended to cover those persons usually designated as "legal assistants", "paralegals" and "lawyers' assistants". The definition exemplifies the broad range of tasks which may be performed by a legal assistant. Other persons such as legal secretaries, law clerks and law graduates not admitted to practice in the State of New Mexico are also encompassed to the extent they perform the tasks contemplated by the definition.

In addition, Rule 20-101 discusses the purposes for Rule 102:

Increasing the availability of legal services to the public at a cost the public can afford is a goal of the legal profession and one which finds its support in Article 5 of the Rules of Professional Conduct. The employment of legal assistants is a particularly significant means by which lawyers can render legal services more economically, in greater volume and with maximum efficiency while maintaining the quality of legal services. Rapid growth in the employment of legal assistants increases the desirability and necessity of establishing guidelines for the use of legal assistants. While the responsibility for compliance with the standards of professional conduct rests with members of the bar, legal assistants should know and understand those standards. A lawyer using the services of a legal assistant is obligated to inform the legal assistant of the restraints and responsibilities incident to the employment and to supervise the performance of the legal assistant. These guidelines are intended to promote the proper development and expansion of legal assistant services, and to provide guidance to both the lawyer and the legal assistant so that increased use of legal assistant services will be in accordance with the Rules of Professional Conduct, statutes, court rules and decisions, and rules and regulations of administrative agencies.

According to the State Bar of New Mexico (2002), the Legal Assistants Division was formally organized in August of 1995 to serve the needs of legal assistants within the state and to establish a good relationship with bar members. New Mexico Rule of Professional Conduct 16-

503, governing attorneys, referred to as *Article 5* in Rule 20-101, sets forth lawyers' responsibilities regarding nonlawyer assistants:

16-503. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

A. a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

B. a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

C. a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT TO MODEL RULES

ABA COMMENT:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

New Mexico Statutes assure that any unregulated profession or occupation, not under the authority of an existing agency, complies with the provisions of the Sunrise Act (N.M. Stat. Ann. § 12-9A-2, Michie 2002). The criteria for licensure and regulation of any occupation is set out in New Mexico Statutes Annotated Section 12-9A-3 (Michie 2002):

In determining whether to enact legislation to create a new board or commission to provide for licensure or regulation of a profession or occupation that is currently not subject to state licensure or regulation, the legislature shall consider whether the following criteria are met:

A. unregulated practice of the profession or occupation will clearly harm or endanger the health, safety or welfare of the public, and the potential for harm is

easily recognizable and not remote;

B. regulation of the profession or occupation does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners or otherwise create barriers to service that are not consistent with the public welfare or interest;

C. existing protections available to the consumer are insufficient, no alternatives to regulation will adequately protect the public and this licensure or regulation will provide that protection and mitigate the problems;

D. functions and tasks of the occupation or profession are clearly defined and the occupation or profession is clearly distinguishable from others already licensed or regulated;

E. the occupation or profession requires possession of knowledge, skills and abilities that are both teachable and testable and the practitioners operate independently and make decisions of consequence;

F. the public needs and can reasonably be expected to benefit from the assurance from the state of initial and continuing professional competence; and

G. the public cannot be effectively protected by other means in a more cost-effective manner.

New York

Definition:

A legal assistant/paralegal is a person who is qualified through education, training or work experience to be employed or retained by a lawyer, law office, governmental agency or other entity in a capacity or function that involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, that requires a sufficient knowledge of legal concepts such that, absent such legal assistant/paralegal, the attorney would perform the task.

How Defined: Bar Association

Guidelines for the Utilization by Lawyers of the Services of Legal Assistants, n.d.,
Preliminary Statement section, ¶ 1

Mandate attempted: No

New York State Bar Association

1 Elk Street

Albany, NY 12207

Phone: (518) 463-3200

Fax: (518) 487-5517

Web Address: <http://www.nysbar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliates:

Capital District Paralegal Association (CDPA)
Post Office Box 12562
Albany, NY 12212-2562
Email: CapitalDistrict@paralegals.org
Web: <http://www.cdpa.info>

Long Island Paralegal Association (LIPA)
1877 Bly Road
East Meadow, NY 11554-1158
Email: LongIsland@paralegals.org

Manhattan Paralegal Association, Inc., (MPA)
Post Office Box 4006
Grand Central Station
New York, NY 10163
Phone: (212) 330-8213
Email: Manhattan@paralegals.org
Web: <http://www.paralegals.org/Manhattan>

Paralegal Association of Rochester (RAP)
Post Office Box 40567
Rochester, NY 14604
Phone: (716) 234-5923
Email: Rochester@paralegals.org

Southern Tier Paralegal Association (STPA)
Post Office Box 2555
Binghamton, NY 13902
Email: SouthernTier@paralegals.org
Web: <http://www.paralegals.org/SouthernTier>

West/Rock Paralegal Association (WRPA)
Post Office Box 668
New City, NY 10956
Email: WestRock@paralegals.org
Web: <http://www.paralegals.org/WestRock>

Western New York Paralegal Association, Inc. (WNYPA)
Post Office Box 207
Niagara Square Station
Buffalo, NY 14201
Email: WesternNewYork@paralegals.org
Web: <http://www.paralegals.org/wnyparalegals.org>

Independent:

Empire State Alliance of Paralegal Associations (ESAPA)
26 F Congress Street, #215
Saratoga Springs, NY 12866
Email: empirestateparalegals@yahoo.com
Web: <http://www.geocities.com/empirestateparalegals>

Discussion:

The New York State Bar Association's Law Practice Management Committee has compiled paralegal information and reference guidelines that have been adopted by the Bar (New York State Bar Association, n.d.). *The Guidelines for the Utilization by Lawyers of the Services of Legal Assistants*, first published in 1976, adopted the ABA's definition of *legal assistant* (NALA, 1999c). The current guidelines revised the 1976 version and supplement the Code of Professional Responsibility as applied to practicing with legal assistants and furnish a definition

of *legal assistant/paralegal* in the *Preliminary Statement* section. (New York State Bar Association, n.d.). The publication encourages attorneys to utilize paralegal services and states:

The employment of educated and trained legal assistants presents an opportunity to expand the public's access to legal services at a reduced cost while preserving attorneys' time for attention to legal services which require the independent exercise of an attorney's judgment. This should enhance the quality of legal services and, at the same time, reduce the total cost of those services. . . . [T]he expanded use of the traditional assistant will benefit both the client and the bar.
(p. 1)

Guideline I describes lawyers' responsibilities regarding legal assistants:

A lawyer may permit a legal assistant to perform services in the representation of a client provided the lawyer:
(A) retains a direct relationship with the client;
(B) supervises the legal assistant's performance of duties; and
(C) remains fully responsible for such representation, including all actions taken or not taken in connection therewith by the legal assistant, except as otherwise provided by statute, court rule or decision, administrative rule or regulation, or by the Code of Profession Responsibility. (p. 3)

In 1987, the Supreme Court of New York, Appellate Division, held that paralegals are not governed by the Code of Professional Responsibility, but that their employing attorneys are in violation of the Code when they fail to supervise paralegals properly (*Glover Bottled Gas Corp. v. Circle M. Beverage Bar, Inc.*, 129 A.D.2d 678, 514 N.Y.S.2d 440, 1987).

The New York State Bar Association Committee on Professional Ethics (1992) advised that the titles of paralegals employed by attorneys may not be false or misleading. The titles *legal associate*, *legal advocate*, and *paralegal coordinator* were strictly forbidden.

New York Judiciary Appendix Code of Professional Responsibility Disciplinary Rule 1-106 establishes lawyers' responsibilities for nonlawyer assistants:

Disciplinary Rule 1-106. Responsibilities Regarding Nonlegal Services.
(a) With respect to lawyers or law firms providing nonlegal services to clients or other persons:
(1) A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law

firm is subject to these Disciplinary Rules with respect to the provision of both legal and nonlegal services.

(2) A lawyer or law firm that provides nonlegal services to a person that are distinct from legal services being provided to that person by the lawyer or law firm is subject to these Disciplinary Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of an attorney-client relationship.

(3) A lawyer or law firm that is an owner, controlling party or agent of, or that is otherwise affiliated with, an entity that the lawyer or law firm knows to be providing nonlegal services to a person is subject to these Disciplinary Rules with respect to the nonlegal services if the person receiving the services could reasonably believe that the nonlegal services are the subject of an attorney-client relationship.

(4) For purposes of paragraphs (2) and (3) of this subdivision, it will be presumed that the person receiving nonlegal services believes the services to be the subject of an attorney-client relationship unless the lawyer or law firm has advised the person receiving the services in writing that the services are not legal services and that the protection of an attorney-client relationship does not exist with respect to the nonlegal services, or if the interest of the lawyer or law firm in the entity providing nonlegal services is de minimis.

(b) Notwithstanding the provisions of subdivision (a) of this section, a lawyer or law firm that is an owner, controlling party, agent, or is otherwise affiliated with an entity that the lawyer or law firm knows is providing nonlegal services to a person shall not permit any nonlawyer providing such services or affiliated with that entity to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person, or to cause the lawyer or law firm to compromise its duty under section 1200.19(b) and (d) of this Part with respect to the confidences and secrets of a client receiving legal services.

(c) For purposes of this section, "nonlegal services" shall mean those services that lawyers may lawfully provide and that are not prohibited as an unauthorized practice of law when provided by a nonlawyer.

North Carolina

Definition:

A legal assistant is a person, qualified through education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity, and who performs specifically delegated substantive legal work for which a lawyer is responsible.

How Defined: Bar Association

Guidelines for Use of Non-Lawyers in Rendering Legal Services, 1998, p. 2

Mandate attempted: No

The North Carolina State Bar
Post Office Box 25908
Raleigh, NC 27611-5908
Phone: (919) 828-4620
Fax: (919) 821-9168
Web Address: <http://www.ncbar.com>

Paralegal Associations:

NALA Affiliate: North Carolina Paralegal Association, Inc. (NCPA)
Post Office Box 36264
Charlotte, NC 28236-6264
Phone: (704) 535-3363
Fax: (704) 372-9882
Email: info@ncparalegal.org
Web: <http://www.ncparalegals.org>

NFPA Affiliate: None

Discussion:

The North Carolina State Bar's *Guidelines for Use of Non-Lawyers in Rendering Legal Services* apply to all non-lawyer assistants although they utilize the 1986 ABA definition of *legal assistant* (North Carolina State Bar, 2002). The opening statement of the guidelines advises:

[A]lthough no state agency regulates paralegals in North Carolina, . . . the North Carolina State Bar . . . regulates the activities of legal assistants through the obligation of its attorney members to supervise legal assistants. The North Carolina State Bar does have regulatory authority to investigate the unauthorized practice of law by a paralegal. (North Carolina State Bar, 1998, ¶ 1)

The guidelines were intended to supplement the Rules of Professional Conduct, which establish the standards for lawyers using non-lawyer assistants (North Carolina State Bar, 2002). North Carolina Professional Conduct Rule 5.3 applies:

Rule 5.3. Responsibilities regarding nonlawyer assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders the conduct involved; or
 - (2) the lawyer has direct supervisory authority over the nonlawyer, and knows of the conduct at a time when its consequences can be avoided but fails to take reasonable action to avoid the consequences.

COMMENT

Lawyers generally employ nonlawyers in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such nonlawyers, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

North Dakota

Definition:

Legal Assistant (or paralegal) means a person who assists lawyers in the delivery of legal services, and who through formal education, training, or experience, has knowledge and expertise regarding the legal system and substantive and procedural law which qualifies the person to do work of a legal nature under the direct supervision of a licensed lawyer.

How Defined: Court

N.D. R. Prof. Conduct *Scope*

Mandate attempted: No

State Bar Association of North Dakota
515 ½ East Broadway, Suite 101
Bismarck, ND 58501
Phone: (701) 255-1404
Fax: (701) 224-1621
Web Address: <http://www.sband.org>

Paralegal Associations:

NALA Affiliate: Western Dakota Association of Legal Assistants (WDALA)
Post Office Box 4007
Bismarck, ND 58502
Email: wdala@hotmail.com
Web: <http://www.wdala.org>

NFPA Affiliate: None

Discussion:

The North Dakota Rules of Professional Conduct contain a preliminary section entitled *Terms* that contains definitions, including that of *legal assistant*. Amendments to the Rules of Professional Conduct were adopted by the Supreme Court on December 11, 1996, effective March 1, 1997 (NALA, 1999c). North Dakota Rules also describe lawyers' responsibilities regarding nonlawyer assistants. Paragraph (2) of Rule 5.3 states what a lawyer may not delegate to a legal assistant:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

The lawyer shall make reasonable efforts to put into effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

The lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

The lawyer shall be responsible for a violation of these rules by the nonlawyer if the lawyer knows of the violation at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

In addition to paragraphs (a), (b) and (c), the following apply with respect to a legal assistant employed or retained by or associated with a lawyer:

(1) A lawyer may delegate to a legal assistant any task normally performed by the lawyer except those tasks proscribed to one not licensed as a lawyer by statute, court rule, administrative rule or regulation, controlling authority, or these rules.

(2) A lawyer may not delegate to a legal assistant:

(i) responsibility for establishing an attorney-client relationship;

(ii) responsibility for establishing the amount of a fee to be charged for a legal service;

(iii) responsibility for a legal opinion rendered to a client; or

(iv) responsibility for the work product.

(3) The lawyer shall make reasonable efforts to ensure that clients, courts, and other lawyers are aware that a legal assistant is not licensed to practice law.

COMMENT

Lawyers generally employ nonlawyers in their practice, including secretaries, legal assistants, investigators, law student interns, and paraprofessionals. These individuals, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and is responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

A second *Comment* section beneath the same rule contains language cautioning attorneys to take care in choosing whom they hire as legal assistants and suggesting guidelines for evaluating the assistants' education and experience:

COMMENT

While appropriate delegation of tasks to legal assistants is allowed, a lawyer may not permit a legal assistant to engage in the "practice of law." The key to appropriate delegation is proper supervision, which includes adequate instruction

when assigning projects, monitoring of the project, and review of the project. Lawyers should take care in hiring and choosing a legal assistant to work on a specific project to ensure that the legal assistant has the education, knowledge, and ability necessary to perform the delegated tasks competently.

The following guidelines have been recognized as helpful in evaluating the education, training or experience of a qualified legal assistant. 1) Graduation from one of the following ABA approved legal assistant/paralegal programs: bachelor's degree, associate's degree, or a post-baccalaureate program. If not ABA approved, graduation from a legal assistant/paralegal program that consists of a minimum of 60 semester credit hours or the equivalent, of which 18 semester credit hours are substantive paralegal courses. 2) A bachelor's degree in any field, and either one-year employer training as a legal assistant/paralegal or 18 semester credit hours of legal assistant/paralegal substantive courses. 3) Successful completion of a national certifying examination that is specifically designed for legal assistants/paralegals and which includes continuing legal education for maintenance of that certification status. 4) Seven years or more of experience working as a legal assistant/paralegal who has been employer trained by and under the supervision of an attorney.

Ny (2001) reported that North Dakota Senate Bill 2126, signed into law on March 19, 2001, provided that attorneys in regular practice must retain complete responsibility for paralegal work-product. Bill 2126 became Section 43-30-02 of the North Dakota Century Code (2002), which serves to exempt paralegals from the necessity of obtaining a private investigator's license if they are employed by an attorney.

Ohio

Definition:

Paralegals (also called “Legal Assistants”) are persons, who, although not admitted to practice law before the bar of the State of Ohio, (1) are qualified through education or training; and (2) are employed or retained on an ongoing, regular basis by a lawyer, law firm, governmental agency, or a business entity in a capacity or function which is designated by such employer as that of a paralegal or legal assistant; and (3) performs legal services under the direction and supervision of a licensed attorney, which services are not primarily clerical or secretarial and which, for the most part, require a sufficient knowledge of legal concerns that, absent such legal assistant, the attorney would perform the task.

How Defined: Bar Association

Legal Assistant Membership Application, 2002, p. 1

Mandate attempted: No

Ohio State Bar Association

1700 Lake Shore Drive

Columbus, OH 43204

Phone: (800) 282-6556

Fax: (614) 487-1008

Web Address: <http://www.ohiobar.org>

Paralegal Associations:

NALA Affiliate:

Toledo Association of Legal Assistants (TALA)

Post Office Box 1322

Toledo, OH 43603-1322

Web: <http://www.tala.org>

NFPA Affiliates:

Northeastern Ohio Paralegal Association (NOPA)

Post Office Box 80068

Akron, OH 44308-0068

Email: NorthEasternOhio@paralegals.org

Web: <http://www.paralegals.org/NortheasternOhio>

Paralegal Association of Central Ohio (COPA)

Post Office Box 1582

Columbus, OH 43215-0182

Phone: (614) 224-9700

Email: CentralOhio@paralegals.org

Web: <http://www.pacoparalegals.org>

Cincinnati Paralegal Association (CPA)
Post Office Box 1515
Cincinnati, OH 45201
Phone: (513) 244-1266
Email: Cincinnati@paralegals.org
Web: <http://www.cincinnati-paralegals.org>

Cleveland Association of Paralegals, Inc. (CAP)
Post Office Box 14517
Cleveland, OH 44114-0517
Phone: (216) 556-5437
Email: Cleveland@paralegals.org
Web: <http://www.capohio.org>

Greater Dayton Paralegal Association (GDPA)
Post Office Box 515, Mid-City Station
Dayton, OH 45402
Email: Dayton@paralegals.org
Web: <http://www.paralegals.org/GreaterDayton>

Discussion:

The Ohio State Bar Association (2002) publishes Ohio's definition of *paralegal* on the face of the 2002 Associate Membership Application. The Ohio State Bar Association Paralegal/Legal Assistant Committee (2002b) has developed a revised definition and proposed its adoption, but approval by the bar is pending:

A paralegal is a person who performs substantive legal work, which requires knowledge of legal concepts and is customarily but not exclusively, performed by a lawyer, and who is qualified through education, training and/or work experience to perform such work. This person may be retained or employed by a lawyer, law office, governmental agency, corporation or other entity, or may be authorized by administrative, statutory or court authority to perform this work. This person may also be known as a legal assistant under this definition. (¶ 2)

At its March 16, 2002 meeting, the Committee (2002a) discussed the possibility of proposing paralegal regulation by statute or court rule. The matter is currently under study.

In Franklin County, Ohio, the Probate Division of the Court of Common Pleas has in place a court rule that requires the registration of all paralegals:

RULE 75.8 REGISTRATION OF PARALEGALS.

(A) Paralegals performing services in matters before this Court must be registered with the Court under Case No. 461,100. The Court recognizes two (2) categories of paralegals: "employee paralegals," paralegals employed exclusively by and performing services for one law firm as an employee of that firm; and "independent paralegals," paralegals operating as free lance/independent contract paralegals or offering services to more than one law firm. Registration shall be on the forms prescribed by the Court.

(1) Employee paralegals need only be registered once, identifying the law firm and stating the paralegal services will be supervised by the attorney(s) of that law firm. An attorney from the firm and the paralegal shall sign the registration certifying that the paralegal is qualified through education, training, or work experience to assist an attorney in matters which will be filed in this Court and that an attorney from the law firm will supervise and be responsible for all services of the paralegal. In fee statements filed with the Court, services of the paralegal must be itemized separately from services performed by an attorney. The law firm shall notify the Court when the paralegal registered with the Court leaves the exclusive employment of the law firm.

(2) Independent paralegals shall be registered for each case in which the independent paralegal is performing services, identifying the case name, case number, and supervising attorney. The supervising attorney and the independent paralegal shall sign the registration certifying that the independent paralegal is qualified through education, training, or work experience to assist the supervising attorney in matters that will be filed in this Court and, as supervising attorney, he or she will supervise and be responsible for all services of the independent paralegal. In fee statements filed with the Court, services of the independent paralegal must be itemized separately from services performed by an attorney. Attorney fees reported in the account shall include a disclosure of the independent paralegal fees on the Receipts and Disbursements form.

(B) In conjunction with Civ. R. 11, a paralegal may not sign any document for the fiduciary, applicant, or supervising attorney.

(C) For purposes of this rule, the Court acknowledges the definition of "paralegal" adopted by the Columbus Bar Association. Registration with the Court does not constitute certification by the Court as to the qualifications of the paralegal.

(D) Failure to comply with this rule may result in the disallowance of the fees and such other action as the Court may deem appropriate.

Further regulation efforts in Ohio include a Supreme Court ruling in the case of *Akron Bar Assn. v. Greene*, 77 Ohio St. 3d 279, 673 N.E.2d 1307 (1997), that enjoined a paralegal from drafting legal documents and appearing in court on behalf of clients.

Oklahoma

Definition:

Legal Assistant/Paralegal - a person qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated legal work for which a lawyer is responsible, and absent such assistant, the lawyer would perform the task.

How Defined: Bar Association

Minimum Qualification Standards for Legal Assistants/Paralegals, 2002, p. 1

Mandate attempted: No

Oklahoma Bar Association
Post Office Box 53036
1901 N. Lincoln Blvd.
Oklahoma City, OK 73152-3036
Phone: (405) 416-7000
Fax: (405) 416-7001
Web Address: <http://www.okbar.org>

Paralegal Associations:

NALA Affiliates: Oklahoma Paralegal Association (OPA)
Post Office Box 5784
Enid, OK 73702-5784
Email: opa@okparalegal.org
Web: <http://www.okparalegal.org>

Tulsa Association of Legal Assistants (TALA)
Post Office Box 1484
Tulsa, OK 74101-1484
Email: webmaster@tulsatala.org
Web: <http://www.tulsatala.org>

NFPA Affiliate: None

Discussion:

On September 15, 2000, the Board of Governors of the Oklahoma Bar Association approved a report of the Legal Assistant Services Committee and adopted the definition of *legal assistant/paralegal* and, in addition, adopted the following minimum requirements:

Work Experience -- time spent by a person employed or retained full-time by a lawyer, law office, corporation, governmental agency, or other entity while performing specifically delegated substantive legal work for which a lawyer is ultimately responsible, and absent such assistant, the lawyer would perform the task. Time spent performing work of a clerical or non-billable nature is specifically excluded.

Institutionally Accredited -- accreditation awarded to institutions by an accrediting agency recognized by the Secretary of the United States Department of Education.

Legal Specialty Courses -- those courses in a specific area of law, procedure, or the legal process designed to train an individual to perform substantive legal tasks as a legal assistant/paralegal within the ethical confines of the law.

Substantial Compliance -- the curriculum and standards of the program conform, except for minor deviations, with the requirements for American Bar Association ("ABA") approval.

QUALIFICATION STANDARDS

A qualified legal assistant/paralegal is a person who meets one of the standards set out in numbers 1 through 7 below.

1. Any individual who has successfully completed the National Association of Legal Assistants's Certified Legal Assistant Examination ("CLA").
2. Any individual who has successfully completed the National Federation of Paralegal Associations's Paralegal Advanced Competency Exam ("PACE").
3. Any individual who has graduated from an ABA-approved program of study for legal assistants/paralegals.
4. Any individual who has a high school diploma or its equivalent, and who has graduated from any program of study for legal assistants/paralegals that is not approved by the ABA but is institutionally accredited, and which is in substantial compliance with the current ABA approval guidelines.
5. Any individual who has a baccalaureate or associate degree in any field from an institutionally accredited school and either:
 - a. Two years of work experience as defined above, or
 - b. The successful completion of the same number of semester hours required by the ABA approval guidelines for legal specialty courses from a program of study set out as numbers 3 and 4 above.
6. Any individual who has a high school diploma or its equivalent, and who has graduated from an institutionally accredited school for legal assistants/paralegals, other than those in 3 and 4 above, that requires at least 60 semester hours of study which includes at least the same number of semester hours required by the ABA approval guidelines for legal specialty courses and either:
 - a. Two years of work experience as defined above, or
 - b. The completion of a baccalaureate or associate degree.
7. Any individual who has a high school diploma or its equivalent, and who has 5 or more years of work experience as defined above.

DISQUALIFYING CRITERIA

No person may qualify as a legal assistant/paralegal who:

1. Is under the supervision of the Department of Corrections, or

2. Is disbarred or whose license to practice law is suspended.

CONTINUING LEGAL EDUCATION RECOMMENDATION

It is recommended that beginning one year after an individual qualifies by virtue of these standards, he/she shall obtain 12 continuing legal education (CLE) credits annually in order to maintain professional competence and continued compliance with the ethical obligations and professional responsibilities of a legal assistant/paralegal. (Oklahoma Bar Association, 2002, pp. 1-3)

The standards are not a mandate. The Oklahoma Bar (2002) reported that it was the intent of the Board of Governors that the guidelines serve as standards for those utilizing the services of paralegals.

A 1993 ruling by the Oklahoma Supreme Court held that legal assistants could interview clients, draft pleadings and other documents, perform legal research, prepare discovery requests/responses, schedule and summarize depositions, coordinate and manage document production, organize pleadings and trial notebooks, prepare witness and exhibit lists, prepare witnesses' trial attendance, and assist lawyers at trial (*Taylor v. Chubb*, 1194 Okla. 47, 874 P.2d 806, 1994). In addition, the ruling stated that the ABA allowed the use of the terms "legal assistant" and "paralegal" interchangeably (p. 808). However, the ruling stopped short of providing the ABA definition for use in Oklahoma.

Oklahoma Statutes Title 5, Appendix 3-A, Rule 5.3 describes lawyers' responsibilities regarding non-lawyer assistants:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Oregon

Definition: None

Mandate attempted: No

Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035
Phone: (503) 620-0222
Fax: (503) 684-1366
Web Address: <http://www.osbar.org>

Paralegal Associations:

NALA Affiliate: Pacific Northwest Legal Assistants (PNLA)
Post Office Box 230669
Portland, OR 97207

NFPA Affiliate: Oregon Paralegal Association (OPA)
Post Office Box 8523
Portland, OR 97207
Email: Oregon@paralegals.org
Web: <http://www.paralegal.org/Oregon>

Discussion:

The Board of Governors of Oregon State Bar declined to proceed toward adoption of a definition of *paralegal* because the state's two paralegal associations could not agree on key provisions (Levy, 2001). Both organizations submitted proposed definitions to the Bar's Policy & Governance (P & G) Committee. According to Levy, the P & G Committee refused action and forwarded the proposals to the Unauthorized Practice of Law (UPL) Committee for consideration. Levy reported that the UPL Committee accepted, in principle, the PNLA proposed definition because it included language providing paralegal supervision and rejected the OPA definition because it did not. Nonetheless, the UPL Committee ultimately rejected the PNLA definition for lack of established parameters (Levy, 2001).

The Legal Assistants (Joint) Committee of the Oregon State Bar (n.d.), now sunsetted, published an informal description of *legal assistant/paralegal* in their brochure, *The Lawyer and the Legal Assistant*:

Legal assistant or paralegal, these are labels that have been used at one time or another to identify an individual who, while not a lawyer, performs a variety of important legal tasks. . . . Legal assistants work with lawyers, are responsible to lawyers, and have been trained or educated to perform certain duties. Legal assistants have knowledge of legal theory, giving them competence A well-trained legal assistant can do almost anything a lawyer can do. (pp. 1-2)

In *Bartsch v. Kulongoski*, 322 Or. 335, 906 P.2d 815 (1995), the Supreme Court of Oregon concluded that the phrases *independent legal technicians* and *independent paralegals* conveyed a sense of weighty legal significance that was false and misleading because those phrases had “no established meaning in law” (p. 339). The Court stated that the terms had no meaning and should not be utilized:

Because the two terms at issue had no outside definition, any person choosing to call herself or himself either an “independent legal technician” or an “independent paralegal” would, by virtue of that self-designation, presumably be authorized to do whatever it is that the act authorizes such persons to do. (p. 340)

Prior to the Court’s ruling, Oregon Senate Bill 1068 (1991) proposed regulation of legal technicians delivering legal services to the public. The bill defined *legal service technician* as “any person who is not an active member of the Oregon State Bar and gives legal assistance or advice to another for compensation. ‘Legal technician’ does not include any person . . . supervised by an active member of the Oregon State Bar” (Or. S. 1068, § 1(1)). The bill, which died in committee, proposed a two-tiered system with a board that would determine whether specialty areas would require a license or registration for independent legal technicians (Or. S. 1068, 1991; Shimko-Herman, 1991). Although, mandatory licensure of legal technicians was

proposed for independent paralegals, this was not an issue for paralegals practicing under the supervision of a member of the bar.

Pennsylvania

Definition: None

Mandate attempted: No

Pennsylvania Bar Association
Post Office Box 186
100 South Street
Harrisburg, PA 17108-0186
Phone: (717) 238-6715
Fax: (717) 238-1204
Web Address: <http://www.pa-bar.org>

Paralegal Associations:

NALA Affiliate: Keystone Legal Assistant Association (KeyLAA)
Post Office Box 25
Enola, PA 17025

NFPA Affiliates: Central Pennsylvania Paralegal Association (CPPA)
Post Office Box 11814
Harrisburg, PA 19381-0295
Email: CentralPennsylvania@paralegals.org
Web: <http://www.CentralPennsylvania.org/>
CentralPennsylvania

Chester County Paralegal Association (CCPA)
Post Office Box 295
West Chester, PA 19381-0295
Email: ChesterCounty@paralegals.org

Lycoming County Paralegal Association (LCPA)
Post Office Box 991
Williamsport, PA 17701
Email: Lycoming@paralegals.org

Montgomery County Paralegal Association (MCPA)
Post Office Box 1765
Blue Bell, PA 19422
Email: Montgomery@paralegals.org
Web: <http://www.paralegals.org/Montgomery>

Philadelphia Paralegal Association (PPA)
Post Office Box 59179
Philadelphia, PA 19102-9179
Phone: (215) 255-8405
Email: PhilaParalegals@aol.com
Web: <http://www.philaparalegals.com>

Pittsburgh Paralegal Association (PPA)
Post Office Box 2845
Pittsburgh, PA 15230
Phone (412) 344-3904
Email: Pittsburgh@paralegals.org
Web: <http://www.paralegals.org/Pittsburgh>

Discussion:

The Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee (2002) reported that Pennsylvania has no formal or statutory definition of *paralegal/legal assistant*, nor has one been adopted by the bar. However, the committee acknowledged that the concept of *paralegal* can be expressed through combination of various definitions promulgated by others:

A person not admitted to the practice of law, who acts as an employee or an assistant to an active bar member . . . a person qualified through education, training or work experience, who is employed or retained by a lawyer, law office, governmental agency or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney of specially-delegated substantive legal work, which for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform (Pennsylvania Bar Association UPL Committee, 2002, p.1)

The legislature addressed the notion of *paralegals* when it enacted the UPL statutes effective July 11, 1996. The NALA (1999c) reported that the statute was enacted in response to widespread concern that individuals were using the terms *paralegal* or *legal assistant* as their occupational title and advertising their services. Title 42 of Pennsylvania Consolidated Statutes Section 2524 (A) (2002) provides:

Except as provided in subsection (b), any person, including, but not limited to, a paralegal or legal assistant, who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction, without being an attorney at law . . . commits a misdemeanor. (§ 2524 (A))

Rule 5.3 of the Pennsylvania Statutes Rules of Professional Conduct addresses the responsibility of attorneys supervising non-lawyer assistants:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm should make reasonable efforts to ensure that the firm has measures in effect giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer should make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rhode Island

Definition:

A legal assistant is one who under the supervision of a lawyer, shall apply knowledge of law and legal procedures in rendering direct assistance to lawyers, clients and courts; design, develop and modify procedures, techniques, services and processes; prepare and interpret legal documents; detail procedures for practicing in certain fields of law; research, select, assess, compile and use information from the law library and other references; and analyze and handle procedural problems that involve independent decisions.

How Defined: Court

R.I. Sup. Ct. Art. V, R. 5.5

Mandate attempted: No

Rhode Island Bar Association

115 Cedar Street

Providence, RI 02903

Phone: (401) 421-5740

Fax: (401) 421-2703

Web Address: <http://www.ribar.com>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Rhode Island Paralegal Association (RIPA)
Post Office Box 1003
Providence, RI 02901
Email: RhodeIsland@paralegals.org
Web: <http://www.paralegal.org/RhodeIsland>

Discussion:

Supreme Court Provisional Order No. 18, effective February 1, 1983, revised October 31, 1990, is contained within the Rhode Island Court Rules Annotated under Rule 5.5. *Unauthorized practice of law*. In addition to the definition of *legal assistant*, the rule further states:

A legal assistant is one who engages in the functions set forth in Guideline 2. Nothing contained in these guidelines shall be construed as a determination of the competence of any person performing the functions of a legal assistant, or as conferring status upon any such person serving as a legal assistant.

GUIDELINES

1. A lawyer shall not permit a legal assistant to engage in the unauthorized practice of law. Pursuant to Rules 5.3 and 5.5 of the Rhode Island Supreme Court Rules of Professional Conduct, the lawyer shares in the ultimate accountability for a violation of this guideline. The legal assistant remains individually accountable for engaging in the unauthorized practice of law.

2. A legal assistant may perform the following functions, together with other related duties, to assist lawyers in their representation of clients: attend client conferences; correspond with and obtain information from clients; draft legal documents; assist at closings and similar meetings between parties and lawyers; witness execution of documents; prepare transmittal letters; maintain estate/guardianship trust accounts; transfer securities and other assets; assist in the day-to-day administration of trusts and estates; index and organize documents; conduct research; check citations in briefs and memoranda; draft interrogatories and answers thereto, deposition notices and requests for production; prepare summaries of depositions and trial transcripts; interview witnesses; obtain records from doctors, hospitals, police departments, other agencies and institutions; and obtain information from courts. Legal documents, including, but not limited to, contracts, deeds, leases, mortgages, wills, trusts, probate forms, pleadings, pension plans and tax returns, shall be reviewed by a lawyer before being submitted to a client or another party.

In addition, except where otherwise prohibited by statute, court rule or decision, administrative rule or regulation, or by the Rules of Professional Conduct, a lawyer may permit a legal assistant to perform specific services in representation of a client. Thus, a legal assistant may represent clients before administrative agencies or courts where such representation is permitted by statute or agency or court rules.

Notwithstanding any other part of this Guideline,

- 1) Services requiring the exercise of independent professional legal judgment shall be performed by lawyers and shall not be performed by legal assistants.
- 2) Legal assistants shall work under the direction and supervision of a lawyer, who shall be ultimately responsible for their work product.
- 3) The lawyer maintains direct responsibility for all aspects of the lawyer-client relationship, including responsibility for all actions taken by and errors of omission by the legal assistant, except as modified by Rule 5.3(c) of the Rules of Professional Conduct.

3. A lawyer shall direct a legal assistant to avoid any conduct which if engaged in by a lawyer would violate the Rules of Professional Conduct. In particular, the lawyer shall instruct the legal assistant regarding the confidential nature of the attorney/client relationship, and shall direct the legal assistant to refrain from disclosing any confidential information obtained from a client or in connection with representation of a client.

4. A lawyer shall direct a legal assistant to disclose that he or she is not a lawyer at the outset in contacts with client, court, administrative agencies, attorneys, or, when acting in a professional capacity, the public.

5. A lawyer may permit a legal assistant to sign correspondence relating to the legal assistant's work, provided the legal assistant's non-lawyer status is clear and

the contents of the letter do not constitute legal advice. Correspondence containing substantive instructions or legal advice to a client shall be signed by an attorney.

6. Except where permitted by statute, or court rule or decision, a lawyer shall not permit a legal assistant to appear in court as a legal advocate on behalf of a client. Nothing in this Guideline shall be construed to bar or limit a legal assistant's right or obligation to appear in any forum as a witness on behalf of a client.

7. A lawyer may permit a legal assistant to use a business card, with the employer's name indicated, provided the card is approved by the employer and the legal assistant's non-lawyer status is clearly indicated.

8. A lawyer shall not form a partnership with a legal assistant if any part of the partnership's activity involves the practice of law.

9. Compensation of legal assistants shall not be in the manner of sharing legal fees, nor shall the legal assistant receive any remuneration for referring legal matters to a lawyer.

10. A lawyer shall not use or employ as a legal assistant any attorney who has been suspended or disbarred pursuant to an order of this court, or an attorney who has resigned in this or any other jurisdiction for reasons related to a breach of ethical conduct.

The Rules also address the responsibility of attorneys regarding supervision of nonlawyer assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENTARY

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment,

particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

South Carolina

Definition: None

Mandate attempted: No

South Carolina Bar
950 Taylor Street
Columbia, SC 29202
Phone: (803) 799-6653
Fax: (803) 799-4118
Web Address: <http://www.scbar.org>

Paralegal Associations:

NALA Affiliates: Charleston Association of Legal Assistants (CALA)
Post Office Box 993
Charleston, SC 29402-0993

Greenville Association of Legal Assistants (GALA)
Post Office Box 728
Greenville, SC 29601-3591

Tri-County Paralegal Association (TCPA)
Post Office Box 62691
North Charleston, SC 29419-2691
Web: <http://www.concentric.net/~tcpa>

NFPA Affiliate: Palmetto Paralegal Association (PPA)
Post Office Box 11634
Columbia, SC 29211-1634
Phone: (803) 252-0460
Email: Palmetto@paralegals.org
Web: <http://www.paralegal.org/Palmetto>

Independent: South Carolina Alliance of Legal Assistant Associations
(SCALAA)
Post Office Box 12574
Columbia, SC 29211

Discussion:

In 2001, the South Carolina Alliance of Legal Assistant Associations (SCALAA) assisted in developing guidelines for a legal assistant division of the South Carolina Bar (Ny, 2001). Lisa

Burgess, spokesperson-elect for SCALAA and employee of the Bar, (personal communication, September 3, 2002) advised that currently the guidelines remain under study, that details are not available to the public, and that SCALAA plans to present its proposal to the Bar within the next few months.

Although there is no official definition of *paralegal*, the Supreme Court of South Carolina has set forth a number of rulings involving paralegals. In the case of *In re Easler*, 275 S.C. 400, 272 S.E.2d 32 (1980), the Court stated:

Paralegals are routinely employed by licensed attorneys to assist in the preparation of legal documents such as deeds and mortgages. The activities of a paralegal do not constitute the practice of law as long as they are limited to work of a preparatory nature, such as legal research, investigation, or the composition of legal documents, which enable the licensed attorney-employer to carry a given matter to a conclusion through his own examination. (p. 401)

In 1996, the Supreme Court heard a case in which a defendant argued that he had a first amendment right to advertise himself as a paralegal because there were no regulations or requiring qualifications to be a paralegal in the state. In *State v. Robinson*, 321 S.C. 286, 468 S.E.2d 290 (1996), the Court responded that it had addressed the function of a paralegal in the *Easler* case and stated:

While there are no regulations dealing specifically with paralegals, requiring a paralegal to work under the supervision of a licensed attorney ensures control over his or her activities by making the supervising attorney responsible. . . . Accordingly, to legitimately provide services as a paralegal, one must work in conjunction with a licensed attorney. (p. 289)

In *John Doe v. Condon*, 341 S.C. 22, 532 S.E.2d 879 (2000), the Court held:

While the important support functions of paralegals have increased through the years, the *Easler* guidelines stand the test of time. As envisioned in *Easler*, the paralegal plays a supporting role to the supervising attorney. . . . It is well settled that a paralegal may not give legal advice, consult, offer legal explanations, or make legal recommendations. (p. 26)

The South Carolina Appellate Court Rule 5.3 governing the practice of law, found in South Carolina Code Annotated Title 407, also addresses the responsibility of attorneys regarding supervision of nonlawyer assistants:

RULE 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

South Dakota

Definition:

Legal assistants (also known as paralegals) are a distinguishable group of persons who assist licensed attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system, substantive and procedural law, the ethical considerations of the legal profession, and the Rules of Professional Conduct as stated in chapter 16-18, which qualify them to do work of a legal nature under the employment and direct supervision of a licensed attorney.

How Defined: Statute

S.D. Codified Laws § 16-18-34 (Michie 2002)

Mandate attempted: No

State Bar of South Dakota

222 E. Capital Avenue

Pierre, SD 57501

Phone: (605) 224-7554

Fax: (605) 224-0282

Web Address: <http://www.sdbar.org>

Paralegal Associations:

NALA Affiliate:

South Dakota Paralegal Association, Inc. (SDPA)

Post Office Box 8381

Rapid City, SD 57709-8381

Web: <http://www.sdbar.org/sdpa>

NFPA Affiliate:

Rocky Mountain Paralegal Association (RMPA)

Post Office Box 481864

Denver, CO 80248-1864

Phone: (303) 370-9444

Email: webmaster@rockymtnparalegal.org

Web: <http://rockymtnparalegal.org>

Discussion:

The South Dakota code section that sets forth the definition of *legal assistant* further states that, “This rule shall apply to all unlicensed persons employed by a licensed attorney who are represented to the public or clients as possessing training or education which qualifies them to assist in the handling of legal matters or document preparation for the client” (§ 16-18-34). In

1997, the statute was amended to rewrite the section recodifying the contents as Sections 16-18-34 through 16-18-34.7. Prior to the amendment, the contents were contained in the Supreme Court Rules.

As an extension of the attorney, the attorney is responsible to insure that the legal assistant complies with the ethical considerations as stated in South Dakota Codified Laws Section 16-18-34.3 (Michie 2002):

The proper use of assistants who are not licensed attorneys significantly increases the ability of attorneys to provide quality professional services to the public at reasonable cost. An attorney cannot, however, delegate his or her ethical proscriptions by claiming that the violation was that of an employee. Thus, in order to secure compliance with the Rules of Professional Conduct more specifically as stated in chapter 16-18, the following ethical guidelines are applicable to the attorney's use of nonlicensed assistants:

- (1) An attorney shall ascertain the assistant's abilities, limitations, and training, and must limit the assistant's duties and responsibilities to those that can be competently performed in view of those abilities, limitations, and training.
- (2) An attorney shall educate and train assistants with respect to the ethical standards which apply to the attorney.
- (3) An attorney is responsible for monitoring and supervising the work of assistants in order to assure that the services rendered by the assistant are performed competently and in a professional manner.
- (4) An attorney is responsible for assuring that the assistant does not engage in the unauthorized practice of law.
- (5) An attorney is responsible for the improper behavior or activities of assistants and must take appropriate action to prevent recurrence of improper behavior or activities.
- (6) Assistants who deal directly with an attorney's clients must be identified to those clients as nonlawyers, and the attorney is responsible for obtaining the understanding of the clients with respect to the rule of and the limitations which apply to those assistants.
- (7) A legal assistant should understand the Rules of Professional Conduct and these rules in order to avoid any action which would involve the attorney in a violation of chapter 16-18, or give the appearance of professional impropriety.
- (8) An attorney takes reasonable measures to insure that all client confidences are preserved by a legal assistant.
- (9) An attorney takes reasonable measures to prevent conflicts of interest resulting from a legal assistant's other employment or interest insofar as such other employment or interest would present a conflict of interest if it were that of the attorney.
- (10) An attorney may include a charge for the work performed by a legal assistant

in setting a charge for legal services.

(11) An attorney may not split legal fees with a legal assistant nor pay a legal assistant for the referral of legal business. An attorney may compensate a legal assistant based on the quantity and quality of the legal assistant's work and the value of that work to a law practice, but the legal assistant's compensation may not be, by advance agreement, contingent upon the profitability of the attorney's practice.

The violation of the ethical guidelines of this section by a paralegal or the supervising attorney shall be grounds for discipline of the supervising attorney under chapter 16-19.

The subsequent section of the statute regulates who may not serve as a legal assistant:

The following persons shall not serve as a legal assistant in the State of South Dakota except upon application to and approval of the Supreme Court.

(1) Any person convicted of a felony.

(2) Any person disbarred or suspended from the practice of law in any jurisdiction.

(3) Any person placed on disability inactive status under § 16-19-48 or 16-19-92.

(4) Any person placed on temporary suspension from the practice of law under § 16-19-35.1. (§ 16-18-34.4)

Bemiss (2002b) reported that the South Dakota Paralegal Association (SDPA) intends to approach the State Bar of South Dakota late this year and request that the words *legal assistant* be replaced with *paralegal* in the Supreme Court Rules relating to use of legal assistants and the statutory definition. Bemiss further advised that SDPA's concern is that the public does not understand the difference between a secretary providing *legal assistance* in the law office and the tasks that are reserved for *paralegals*. Bemiss stated that SDPA anticipated no opposition to the wording change. Moreover, Bemiss (2002c) noted that legal assistants in South Dakota were split on whether to pursue regulation.

Tennessee

Definition: None

Mandate attempted: No

Tennessee Bar Association
221 Fourth Avenue, Suite 400
Nashville, TN 37219
Phone: (615) 383-7421
Fax: (615) 297-8058
Web Address: <http://www.tba.org>

Paralegal Associations:

NALA Affiliates: Tennessee Paralegal Association. (TPA)
281 Waddell Road, S.W.
Cleveland, TN 37311
Web: <http://firms.findlaw.com/TPA>

Greater Memphis Paralegal Alliance, Inc. (GMPA)
Post Office Box 3846
Memphis, TN 38173
Phone: (901) 527-6254
Web: <http://www.memphisparalegals.org>

NFPA Affiliates: Memphis Paralegal Association (MPA)
Post Office Box 3646
Memphis, TN 38173-0646
Email: Memphis@paralegals.org
Web: <http://www.paralegals.org/Memphis>

Middle Tennessee Paralegal Association (MTPA)
Post Office Box 198006
Nashville, TN 37219
Email: MiddleTennessee@paralegals.org

Discussion:

On August 27, 2002, the Supreme Court approved new Rules of Professional Conduct for attorneys practicing in Tennessee (Tennessee Bar Association, 2002). The Rules become effective March 1, 2003, and lawyers' responsibilities concerning nonlawyer assistants are set out in Rule 5.3 of the Tennessee Rules of Professional Conduct:

Rule 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

With respect to a nonlawyer employed, retained by, or associated with a lawyer:

- (a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with these Rules;
- (b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with these Rules; and
- (c) a lawyer shall be responsible for the conduct of a nonlawyer if the conduct would be a violation of these Rules if engaged in by a lawyer, and if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer:
 - (i) is a partner or has comparable managerial authority in a law firm in which the person is employed or has direct supervisory authority over the nonlawyer, and
 - (ii) knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.

COMMENT

Lawyers generally employ nonlawyers in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such employees act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such employees appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Texas

Definition:

A legal assistant is a person not admitted to the practice of law in Texas but ultimately subject to the definition of "the practice of law" as set forth in the law of the State of Texas, who has, through education, training and experience, demonstrated knowledge of the legal system, legal principles and procedures, and who uses such knowledge in rendering paralegal assistance to an attorney in the representation of that attorney's clients.

How Defined: Court

Gill Sav. Ass'n v. International Supply, 759 S.W.2d 697, 703 (Tex. App. 1988)

Mandate attempted: No

State Bar of Texas

1414 Colorado

Post Office Box 12487

Austin, TX 78711

Phone: (512) 463-1463

Fax: (512) 463-1475

Web Address: <http://www.texasbar.com>

Paralegal Associations:

NALA Affiliates:

Capital Area Paralegal Association. (CAPA)

Post Office Box 773

Austin, TX 78767

Phone: (512) 505-6822

Web: <http://www.capatx.org>

El Paso Association of Legal Assistants (EPALA)

1520 N. Campbell

El Paso, TX 79924

Legal Assistants Association/Permian Basin (LAAPB)

Post Office Box 2776

Midland, TX 79702

Legal Assistants of North Texas Association (LANTA)

6700 LBJ Freeway, Suite 3200

Dallas, TX 75240-6503

Northeast Texas Association of Legal Assistants (NTALA)

414 E. Loop 281, Suite 1

Longview, TX 75605

Southeast Texas Association of Legal Assistants (STALA)
905 Orleans
Beaumont, TX 77701
Texas Panhandle Association of Legal Assistants (TPALA)
Post Office Box 9620
Amarillo, TX 79105

Tyler Area Association of Legal Professionals (TAALP)
100 E. Ferguson Street, Suite 1015
Tyler, TX 75702

West Texas Association of Legal Assistants (WTALA)
Post Office Drawer 53310
Lubbock, TX 79453

NFPA Affiliate:

Dallas Area Paralegal Association (DAPA)
Post Office Box 12533
Dallas, TX 75225-0533
Phone: (901) 527-6254
Web: <http://www.dallasparalegals.org>

Discussion:

Lisa Sprinkle (2002), President of the Legal Assistants Division of the State Bar of Texas, reported that Texas' Legal Assistants Committee was established by the State Bar Board of Directors on October 23, 1981. Establishment of the Division was the first such action by any state bar association in the country (D'Antonio, 2002; Ny, 2001; Sprinkle, 2002). As a result of the efforts of the Legal Assistants Committee, the State Bar of Texas adopted a definition of *paralegal* on October 4, 1986 (Sprinkle). The Court of Appeals then adopted a version of the definition as stated above (State Bar of Texas Legal Assistants Committee, n.d.). In the same case, *Gill Sav. Ass'n v. International Supply*, 759 S.W.2d 697 (Tex. App. 1988), the Court also stated:

The attorney is responsible for the work of the legal assistant and the legal assistant remains, at all times, responsible to and under the supervision and direction of the attorney. The functions of a legal assistant are defined by the

attorney responsible for the legal assistant's supervision and direction, and are limited only to the extent that they are limited by law. (p. 703)

Sprinkle reported that, in 1987, the Legal Assistants Division Board authorized the creation of a Task Force on voluntary certification. In 1989, a Dallas attorney proposed that the legal assistant specialty certification program be administered by the Texas Board of Legal Specialization. Under the guidance of the State Bar's Standing Committee on Legal Assistants chair, this proposal was advanced. A certification exam modeled along the lines of the Texas Specialty Examinations for attorneys was recommended and the Legal Assistants Division, State Bar of Texas Voluntary Specialty Certification Task Force was created (Sprinkle). Specialty Certification for Legal Assistants was approved by the Supreme Court of Texas on May 18, 1993, to be administered by the Texas Board of Legal Specialization (Sprinkle). According to Brunner (2002b), the Task Force is currently studying other states' actions regarding paralegal regulation and "what Texas may want to do in response" (p. 18).

An Attorney's Guide to Practicing with Legal Assistants, was jointly prepared by the Legal Assistants Committee of the State Bar and the Division in 1985, and updated in 1994 (Sprinkle). In addition, Texas Rules of Professional Conduct, Rule 5.03 addresses the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.03 Responsibilities Regarding Nonlawyer Assistants.

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the persons conduct is compatible with the professional obligations of the lawyer; and

(b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if:

(1) the lawyer orders, encourages, or permits the conduct involved; or

(2) the lawyer:

(i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or

has direct supervisory authority over such person; and
(ii) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that persons misconduct.

Comment:

1. Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants act for the lawyer in rendition of the lawyers' professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-lawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.
2. Each lawyer in a position of authority in a law firm or in a government agency should make reasonable efforts to ensure that the organization has in effect measures giving reasonable assurance that the conduct of nonlawyers employed or retained by or associated with the firm or legal department is compatible with the professional obligations of the lawyer. This ethical obligation includes lawyers having supervisory authority or intermediate managerial responsibilities in the law department of any enterprise or government agency.

Utah

Definition:

A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity of function which involves the performance, under the ultimate direction and supervision of an attorney of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform. A legal assistant or "paralegal" includes a paralegal on a contract or free-lance basis who works under the supervision of a lawyer or who produces work directly for a lawyer for which a lawyer is accountable.

How Defined: Court

Utah Code Jud. Admin. R. III (V) (1)

Mandate attempted: No

Utah State Bar
645 South 200 East
Salt Lake City, UT 84111
Phone: (801) 531-9077
Fax: (801) 531-0660
Web Address: <http://www.utahbar.org>

Paralegal Associations:

NALA Affiliate: Legal Assistants Association of Utah (LAAU)
230 South 5th East, #590
Salt Lake City, UT 84102

NFPA Affiliate: Rocky Mountain Paralegal Association (RMPA)
Post Office Box 481864
Denver, CO 80248-1864
Phone: (303) 370-9444
Email: webmaster@rockymtnparalegal.org
Web: <http://rockymtnparalegal.org>

Discussion:

The Supreme Court Rules of Professional Practice define *legal assistant* and provide for qualified individuals to become members of Utah State Bar's Legal Assistant Division:

Qualified individuals can become "Legal Assistant Affiliates" of the Bar upon submitting an application to the Legal Assistant Division of the Bar. This would

require the following:

- (a) An initial and annual certification of continuous sponsorship of a Legal Assistant Affiliate by an employer who is a member of the Utah State Bar;
 - (b) A certification by the attorney and Legal Assistant Affiliate that the legal assistant undertakes no legal work outside the attorney's supervision or supervision of attorney members of the firm. Joint sponsorship by joint employers would be permitted;
 - (c) An assumption of responsibility by the attorney for the compliance of the legal assistant with all applicable rules of the Utah State Bar;
 - (d) The Legal Assistant Affiliate's parallel commitment that the attorney and Legal Assistant Affiliate will notify the Bar of any change of employment of the Legal Assistant Affiliate. The Legal Assistant Affiliates' authority to function as a Legal Assistant Affiliate will terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Bar; and.
 - (e) An appropriate fee.
- (3) Officers of Legal Assistant Division and ex officio membership on the Board. The Legal Assistant Division may appoint officers (president, vice- president, treasurer, secretary) on an annual basis. The division may also appoint an ex officio, non-voting member of the Board who shall report regularly to the division's membership regarding the overall activities of the Bar.
- (a) Legal Assistant Affiliates are eligible to receive the Utah Bar Journal , notices of Bar functions and bar-member rates at seminars and meetings. Legal Assistant Affiliates are not eligible for office within the Bar.
 - (b) Legal Assistant Affiliates shall not be directly subject to discipline by the Bar. However, supervising or responsible attorneys are responsible for all work undertaken by Legal Assistant Affiliates for or on their behalf.

(Utah Code Jud. Admin. R. III (V) (2))

Rule 5.3 of Utah Code of Judicial Administration addresses the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has

direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment. -- Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Vermont

Definition:

A paralegal/legal assistant is a person qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency, or other entity or may be authorized by administrative, statutory or court authority to perform this work.

How Defined: Bar Association

Constitution of the Vermont Bar Association, 2000, p. 2

Mandate attempted: No

Vermont Bar Association
35-37 Court Street
Post Office Box 100
Montpelier, VT 05601-0100
Phone: (802) 223-2020
Fax: (802) 223-1573
Web Address: <http://www.vtbar.org>

Paralegal Associations:

NALA Affiliate: None

NFPA Affiliate: Vermont Paralegal Organization (VPA)
Post Office Box 5755
Burlington, VT 05402
Email: Vermont@paralegals.org
Web: <http://www.paralegals.org/Vermont>

Discussion:

The Constitution of the Vermont Bar Association (2000) defines *paralegal/legal assistant* and states that associate membership is available to paralegals who meet the following criteria:

1. The paralegal/legal assistant has not been convicted of the unauthorized practice of law in any state.
2. The paralegal/assistant meets one of the following criteria:
 - a. A baccalaureate degree, plus completion of an educational program for paralegals, plus 6 months in-house paralegal training; or

- b. An associates degree (or equivalent number of credit hours), plus completion of an educational program for paralegals, plus 1 year in-house paralegal training; or
- c. An associates degree with concentration in paralegal studies, plus 1 year in-house paralegal training; or
- d. A high school diploma, plus completion of an educational program for paralegals, plus 2 years in-house paralegal training; or
- e. A baccalaureate degree, plus 1 year in-house paralegal training; or
- f. An associates degree (or equivalent number of credit hours), plus 2 years in-house paralegal training; or
- g. A high school diploma, plus 4 years in-house paralegal training. (p. 2)

Vermont Statutes Annotated (2002) provide for mandatory licensure of private investigators in Title 26. Professions and Occupations. However, the licensure of “paralegals and other laypersons regularly employed exclusively by one attorney or law firm when the attorney or law firm retains complete professional responsibility for the work product of the . . . paralegal” is specifically exempted (§ 3151a(5)).

Rule 5.3 of Vermont Rules of Professional Conduct addresses the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the

lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Title 26. Chapter 57. *Review of Licensing Statutes of the Vermont Statutes Annotated*

(2002) sets forth criteria and standards for regulation of an occupation:

- (a) A profession or occupation shall be regulated by the state only when:
 - (1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;
 - (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
 - (3) the public cannot be effectively protected by other means.
- (b) After evaluating the criteria in subsection (a) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a profession or occupation, the least restrictive method of regulation shall be imposed, consistent with the public interest and this section:
 - (1) if existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions;
 - (2) if a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners;
 - (3) if the threat to the public health, safety, or welfare including economic welfare is relatively small, regulation should be through a system of registration;
 - (4) if the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification; or
 - (5) if it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.
- (c) Any of the issues set forth in subsections (a) and (b) of this section and section 3107 of this title may be considered in terms of their application to professions or occupations generally.
- (d) Prior to review under this chapter and consideration by the legislature of any bill to regulate a profession or occupation, the office of professional regulation shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The office shall report its preliminary assessment to the appropriate house or senate committee on government operations. (§ 3105)

Virginia

Definition:

A legal assistant is a specially trained individual who performs substantive legal work that requires a knowledge of legal concepts and who either works under the supervision of an attorney, who assumes professional responsibility for the final work product, or works in areas where lay individuals are explicitly authorized by statute or regulation to assume certain law-related responsibilities.

How Defined: Bar Association

Resolution of Standing Committee on the Unauthorized Practice of Law, March 8, 1996

Mandate attempted: No

Virginia State Bar
707 E. Main Street, Suite 1500
Richmond, VA 23219-2800
Phone: (804) 775-0500
Fax: (804) 775-0501
Web Address: <http://www.vsb.org>

Paralegal Associations:

NALA Affiliates:

Richmond Association of Legal Assistants (RALA)
Post Office Box 384
Richmond, VA 23218-0384
Email: rala1982@yahoo.com
Web: <http://geocities.com/CapitolHill/7082>

Peninsula Legal Assistants, Inc. (PLA)
2715 Huntington Avenue
Newport News, VA 23607

Roanoke Valley Paralegal Association (RVPA)
Post Office Box 14125
Roanoke, VA 24038-4125

Tidewater Association of Legal Assistants (TALA)
Post Office Box 3490
Norfolk, VA 23510

NFPA Affiliate: Fredericksburg Association of Legal Assistants (FALA)
Post Office Box 7351
Fredericksburg, VT 22404
Email: Fredericksburg@paralegals.org
Web: <http://paralegals.org/Fredericksburg>

Independent: Virginia Alliance of Legal Assistant Associations
(VALAA)
Post Office Box 88
Harrisonburg, VA 22803

Discussion:

In addition to adopting the definition stated, the Virginia State Bar's (VSB) Standing Committee on the Unauthorized Practice of Law (UPL) has proposed a new rule to be added to the UPL rules (Virginia State Bar, 2002). The proposed rule not only defines *paralegal/legal assistant* but also purports to clarify and delineate what services a paralegal can and cannot perform (Virginia State Bar). If the proposed Rule 10 is approved by the VSB Council, the Bar will petition the Virginia Supreme Court for approval. If approved by the Supreme Court, the rule becomes part of Virginia Supreme Court Rules and Virginia's definition of a *paralegal* would then be classified as *defined by court*. The Virginia State Bar reported that the Council will consider approval of the new rule at its annual meeting in late 2002. As reported by the Bar, the proposed Rule 10 states:

UNAUTHORIZED PRACTICE OF LAW RULE 10. LEGAL ASSISTANTS.

UPR 10-101: Definitions.

(A) "Legal Assistant" refers to a non-lawyer, who by experience or special training has knowledge of legal concepts, working for and under the supervision of a lawyer who ultimately assumes professional responsibility for the final work product.

(B) "Paralegal" is a term equivalent to "legal assistant" for the purposes of this rule.

UPR 10-102: Performance of Services by Legal Assistant

(A) A legal assistant shall not engage in the unauthorized practice of law and shall not encourage or contribute to any act by another that would constitute the unauthorized practice of law. A legal assistant shall not provide legal advice, other than to a supervising attorney.

(B) A legal assistant shall not represent a client before any tribunal and shall not sign pleadings on behalf of another person. A legal assistant is permitted to sign legal documents as a witness or notary public, or in some other non-representative capacity, and may prepare pleadings and other legal documents for use by a supervising lawyer.

(C) A legal assistant may provide services to assist a lawyer in the representation of a client, provided that:

(1) The lawyer maintains a direct relationship with the client and supervises all matters;

(2) The lawyer remains fully responsible for all work done by the legal assistant on behalf of the client; and

(3) The work product of the legal assistant is considered to be part of the lawyer's work product.

(D) A legal assistant working under the supervision of a lawyer may participate in gathering information from a client during an initial interview, providing that this process involves nothing more than the gathering of factual data and that the legal assistant renders no legal advice to the client.

(E) A legal assistant shall not determine for the client the validity of a client's legal claim.

(F) A legal assistant may perform certain activities relating to the lawyer's fee agreement with the client. The legal assistant may transmit the document to the client and obtain the client's signature on the document. The legal assistant may answer factual questions regarding the fee agreement but such answers shall not include any advice as to the legal ramifications of the agreement's provisions.

(G) A legal assistant may serve a limited role in settlement negotiations. A legal assistant may transmit information and documents between the lawyer and client, such as the latest settlement offer. A legal assistant may not evaluate the offer or make recommendations to the client regarding acceptance. A legal assistant may convey to the client the lawyer's evaluation or recommendation of such offer.

(H) A legal assistant shall not provide, nor hold himself or herself out as being able to provide, legal services except under the direct supervision of an attorney authorized to practice law in the Commonwealth of Virginia.

UPR 10-103: Disclosure of Status

(A) A legal assistant has an affirmative duty during any professional contact to clarify that the legal assistant is not an attorney.

(B) A legal assistant may have a business card and may be included on the letterhead of a lawyer or law firm provided that the professional status of the legal assistant is designated. A legal assistant may sign letters on an attorney's letterhead, provided that such signature is followed by the appropriate designation of the legal assistant's professional status.

UPR 10-104: Forming of Partnerships

A legal assistant shall not form a partnership with a lawyer if any of the activities of the partnership consist of the practice of law. A legal assistant is not prohibited from forming a business association with a member of the legal profession for purposes other than that of the practice of law.

UPR 10-105: Delegation by a Lawyer

A legal assistant may not accept the delegation by an attorney of any of the following responsibilities:

- (1) Establishing a lawyer/client relationship;
- (2) Establishing the fee to be charged for a legal service;
- (3) Rendering legal advice to a client; and
- (4) Maintaining a direct relationship with the client.

UNAUTHORIZED PRACTICE CONSIDERATIONS

UPC 10-1: Legal assistants are encouraged, but not required, to participate in continuing legal education courses, including courses in legal ethics and professional responsibility, to keep themselves informed of current developments in the law and the legal profession.

The Virginia Alliance of Legal Assistant Associations (1999) reported that it had requested that educational requirements be contained within the new rule. However, the new rule, as proposed, does not address educational criteria.

Rule 5.3 of the Virginia Supreme Court Rules addresses the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

NOTES:

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The

measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. At the same time, however, the Rule is not intended to preclude traditionally permissible activity such as misrepresentation by a nonlawyer of one's role in a law enforcement investigation or a housing discrimination "test".

Title 54.1. Professions and Occupations of the Code of Virginia Annotated (Michie 2002)

states the criteria for regulation of an occupation:

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists. (§ 54.1-100)

Washington

Definition:

A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves a performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

How Defined: Court

Absher Construction Co. v. Kent School District, 917 P.2d 1086, 1088 (Wash. App. 1995)

Mandate attempted:	Yes
Form:	Certification
By Whom:	Legislature
Status:	Died upon referral to Committee

Washington State Bar Association
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
Phone: (206) 443-9722
Fax: (206) 727-8320
Web Address: <http://www.wsba.org>

Paralegal Associations:

NALA Affiliate:	None
NFPA Affiliate:	Washington State Paralegal Association (WSPA) Post Office Box 48153 Burien, WA 98148 Email: info@wspaonline.org Web: http://www.wspaonline.com

Discussion:

The current definition of *legal assistant/paralegal* in Washington is controlled by declaration of the Court of Appeals. The Court, in *Absher Construction Co. v. Kent School District*, 917 P.2d 1086 (Wash. App. 1995), stated that it believed, “as did the Arizona court,” that the definition formulated by the ABA provides “appropriate guidance” (p. 1088).

House Bill 1975, introduced in 1991, proposed regulation of paralegals in the form of mandatory certification and prescribed the qualifications necessary for application. The bill died upon its referral to the Judiciary Committee (Shimko-Herman, 1991).

In 2000, the Washington State Bar Association's Board of Governors unanimously adopted a proposed rule that would establish a Practice of Law Board with authority to recommend to the Washington Supreme Court limited areas of practice by nonlawyers (Maloney, 2002). The Bar's Legal Assistants Committee assisted in the proposed rule changes and examined other states' actions regarding the licensing of legal assistants (Washington State Bar Association, 2000). The Committee submitted written comments on General Rule (GR) 22, a new proposed *Definition of the Practice of Law*, and GR 21, a proposed *Court Facilitator Rule* (Washington State Bar Association, n.d.). After the Committee recommended that the Bar actively promote the utilization of legal assistants as one method of enhancing the delivery of affordable legal assistance, the Bar's Board of Governors voted to sunset its Legal Assistants Committee in favor of the new *Practice of Law Board* (Washington State Bar Association, n.d.). According to Jerri Ninesling, Program Manager of Bar Leaders Division of the Washington State Bar Association, (personal communication, September 1, 2002) the Committee was sunsetted effective September 30, 2002.

General Rule (G.R.) 24. *Definition of Practice of Law*, effective April 30, 2002, allows for exceptions/exemptions to the *practice of law* (Washington State Bar Association, 2002). Under the new rules it is permissible to practice with a limited license, serve as a court house facilitator, act as a lay representative authorized by administrative agencies, serve in a neutral capacity as a mediator, arbitrator, or facilitator, participate in labor negotiations, provide assistance to another to complete specified domestic violence court forms, sell legal forms in any

format, and perform such other activities as the Supreme Court determines do not constitute *unauthorized practice* (Wash. G.R. 24).

“Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct”

(Wash. G.R. 24). Rule 5.3 of the Washington Rules of Court Annotated (Rules of Professional Conduct) addresses the responsibilities of an attorney regarding nonlawyer assistants:

Rule 5.3 Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

West Virginia

Definition:

A legal assistant is a person, qualified through education, training or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity, in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistance, the attorney would perform the task.

How Defined: Bar Association

Legal Assistants Committee Meeting Minutes, May 6, 1999, ¶ 3

Mandate attempted: No

West Virginia State Bar
2006 Kanawha Boulevard, East
Charleston, WV 25311-2204
Phone: (304) 558-2456
Fax: (304) 558-2467
Web Address: <http://www.wvbar.org>

Paralegal Associations:

NALA Affiliate: Legal Assistants of West Virginia, Inc. (LAWV)
Post Office Box 871
Wheeling, WV 26003
Email: lawv.geo@yahoo.com
Web: <http://www.geocities.com/~lawv>

NFPA Affiliate: None

Discussion:

The West Virginia State Bar (1999) adopted a definition of *legal assistant* at its Board of Governors Meeting in July of 1999. The adopted definition parallels the 1986 ABA definition with one word difference (West Virginia State Bar Legal Assistants Committee, 1999). As reported by Graley, Lambert, and Ellis (2000), the word *specifically* was omitted before the words *delegated substantive legal work*.

Rule 5.3 of West Virginia Professional Conduct Rules addresses the responsibilities of attorneys regarding nonlawyer assistants:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Wisconsin

Definition:

A “Paralegal” is an individual qualified through education and training, employed or retained by a lawyer, law office, governmental agency or other entity licensed to perform substantive legal work, supervised by a lawyer licensed to practice law in this State, requiring a sufficient knowledge of legal concepts that, absent the Paralegal, the attorney would perform the work.

How Defined: Bar Association

Paralegal Practice Task Force Meeting Minutes, November 6, 1996, ¶ 4

Mandate attempted:	Yes
Form:	Licensure
By Whom:	Joint effort – Bar Association, paralegal associations
Status:	Pending (See Discussion)

State Bar of Wisconsin
5202 Eastpark Blvd.
Post Office Box 7158
Madison, WI 53707-7158
Phone: (608) 257-3838
Fax: (608) 257-5502
Web Address: <http://www.wis.org>

Paralegal Associations:

NALA Affiliate:	Madison Area Paralegal Association (MAPA) Post Office Box 1068 Madison, WI 53705
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NFPA Affiliate:	Paralegal Association of Wisconsin, Inc. (PAW) Post Office Box 510892 Milwaukee, WI 53203-0151 Phone: (414) 272-7168 Email: MK3@quarles.com Web: http://www.wisconsinparalegal.org
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Discussion:

Since 1996, the State Bar of Wisconsin, the Paralegal Association of Wisconsin (PAW), and paralegal educators have joined forces to develop a proposal for mandatory licensing of paralegals in Wisconsin (Paralegal Association of Wisconsin, 2002; State Bar of Wisconsin,

2000). According to Daniel Rossmiller, Public Affairs Administrator of the State Bar of Wisconsin, (personal communication, September 27, 2002) the State Bar of Wisconsin Paralegal Practice Task Force (Task Force) forwarded its initial recommendations regarding regulation to the State Bar's Board of Governors for consideration at its June 2000 meeting. According to Rossmiller, the Board of Governors approved the basic rules draft but "requested that the section of the proposed rules governing Rules of Professional Conduct for Paralegals be reviewed to see whether it compared with the Rules of Professional Conduct" applicable to attorneys. The result was redrafted paralegal rules (Rossmiller). Rossmiller advised that on July 31, 2002, the Task Force met to review the status of the project and to submit suggested changes. According to Rossmiller, once the Task Force has had an opportunity to meet again, the complete set of rules will be compiled and, if accepted by the Bar, submitted to the Wisconsin Supreme Court for approval. The State Bar of Wisconsin Paralegal Practice Task Force's (2002) current proposal for rules and definitions are:

Preamble: A Paralegal's Responsibility.

A paralegal is an individual qualified through education and training, employed or retained to perform substantive legal work, supervised by an attorney licensed to practice law in this state, requiring a sufficient knowledge of legal concepts that, absent the paralegal, the attorney would perform the work.

As an integral partner in the delivery of legal services, the paralegal has a special responsibility for the quality of justice provided. The paralegal through his/her work with the supervising attorney seeks a result that is advantageous to the client but consistent with the requirements of honest dealings with others.

In all professional functions a paralegal should be competent, prompt and diligent. A paralegal should, whenever possible, assist in the communication with a client concerning the representation. A paralegal should keep in confidence information relating to representation of a client except as far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A paralegal's conduct should conform to the requirements of the law, both in professional service to clients and in the paralegal's employment and personal affairs. A paralegal should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A paralegal should demonstrate respect for

the legal system and for those who serve it, including attorneys, judges and public officials. While it is a paralegal's duty, as a private citizen, when necessary to challenge the rectitude of official action, it is also the paralegal's duty to uphold the legal process.

As a public citizen, a paralegal should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a paralegal should cultivate knowledge in reform of the law and work to strengthen legal education. A paralegal should possess integrity, professional skill and dedication to the improvement of the legal system and should strive to enhance the paralegal role in the delivery of legal services. A paralegal should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A paralegal should aid the legal profession in pursuing these objectives.

Many of the paralegal's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as in substantive and procedural law. However, a paralegal is also guided by personal conscience and the approbation of professional peers. A paralegal should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

In the nature of law practice, however, conflicting responsibilities are encountered. A paralegal shall act within the bounds of the law, solely for the benefit of the client, and shall be free of compromising influences and loyalties. Neither the paralegal's personal or business interest, nor those of other clients or third persons, should compromise the paralegal's professional judgement and loyalty to the client. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.

Scope

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of assisting in legal representation and of the law itself. Some of the rules are imperatives; cast in the terms of "shall" or "shall not". These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may", are permissive and define areas under the rules in which the paralegal has professional discretion. No disciplinary action should be taken when the paralegal chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the paralegal and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a paralegal's professional role.

Furthermore, for purposes of determining the paralegal's role in relationship to an attorney's authority and responsibility, principles of substantive law external to these rules determine whether a client-attorney-paralegal relationship exists.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a paralegal's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a paralegal often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed by a violation, and the severity of a sanction, depend on the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to paralegals and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a paralegal's self-assessment, or for sanctioning a paralegal under the administration of a disciplinary authority, does not imply that an antagonist is a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of paralegals or the extra-disciplinary consequences of violating such duty.

SCR XX.YY

Requirements for Initial Licensure

- (a) Except as provided in sec. XX.WW, no person may be licensed as a paralegal unless that person has successfully completed post-secondary education and training that, at a minimum, includes either –
- (1) an associates degree or bachelors degree in paralegal or legal assistant studies from an institution of post-secondary education which maintains a program of paralegal or legal assistant studies that is sanctioned by the Wisconsin Technical College System Board, sanctioned by the University of Wisconsin Board of Regents, or approved by the American Bar Association Assembly of Delegates, or which is an institutional member of the American Association for Paralegal Education; or
 - (2)(A) an associates degree or bachelors degree in any discipline from an institution of post-secondary education which is accredited by an accrediting body recognized by the United States Department of Education; and
(B) not less than 18 credits of qualified paralegal studies courses with a minimum grade of "C" in each course, any portion of which may be a part of or in addition to the credits earned toward the foregoing degree, in the following areas:
 - (i) 3 credits in legal research;
 - (ii) 3 credits in legal writing;
 - (iii) 1 credit in legal ethics;

- (iv) 1 credit in Wisconsin litigation practice;
 - (v) 6 credits in specific areas of substantive law; and
 - (vi) not less than 4 credits in any of the areas specified in clauses (i) - (v).
- (b) "Qualified paralegal studies courses" are courses within a program of paralegal or legal assistant studies offered by an institution of post-secondary education which maintains a post-baccalaureate, two-year, or four-year program of paralegal or legal assistant studies that is sanctioned by the Wisconsin Technical College System Board, sanctioned by the University of Wisconsin Board of Regents, or approved by the American Bar Association Assembly of Delegates, or which is an institutional member of the American Association for Paralegal Education.
- (c) A "semester credit" of a qualified paralegal studies course requires a minimum of 14 clock-hours of classroom instruction

SCR XX.ZZ

Maintenance of Paralegal Licensure

- (a) No person may maintain a license as a paralegal unless that person -
- (1) successfully completes at least 10 hours of approved continuing paralegal education or continuing legal education during each reporting period, a minimum of 2 hours of which shall be in the area of legal ethics and professional responsibility; or
 - (2) successfully completes with a minimum grade of "C" at least 1 semester credit of a qualified paralegal studies course during each reporting period.
- (b) "Reporting period" means the two year period during which a paralegal must satisfy the Wisconsin continuing paralegal education requirements of this section. The reporting period for a paralegal licensed in an even-numbered year shall end on December 31 of each even-numbered year following the year in which the paralegal was licensed initially. The reporting period for a paralegal licensed in an odd-numbered year shall end on December 31 of each odd-numbered year following the year in which the paralegal was licensed initially.
- (c) "Hour" means a period of approved continuing paralegal education or continuing legal education consisting of not less than 50 minutes.

SCR 20:1.1 Competence

A paralegal shall provide competent assistance to the attorney's client. Competent assistance requires the knowledge, skill, thoroughness and preparation reasonably necessary.

SCR 20:1.2 Scope of Representation

- (a) A paralegal shall abide by a client's decisions concerning the objectives or representation by the attorney, subject to paragraphs (c), (d) and (e), and shall consult, as directed by the attorney, with the client as to the means by which they are to be pursued.
- (b) The paralegal's assistance in representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A paralegal may assist the attorney in limiting the objectives of the representation if the client consents after consultation with the attorney.

(d) A paralegal shall not counsel a client to engage, or assist a client, in conduct that the paralegal knows is criminal or fraudulent, but a paralegal may be involved in the discussion of legal consequences of any proposed course of conduct with a client and may assist, under the direction of an attorney, a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a paralegal knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the paralegal shall consult with the attorney regarding the relevant limitations on the paralegal's conduct.

SCR 20:1.3 Diligence

A paralegal shall act with reasonable diligence and promptness.

SCR 20.1.4 Communication

(a) A paralegal shall assist the attorney in keeping a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A paralegal shall assist the attorney in explaining a matter to the extent reasonably necessary to permit the client to make informed decisions.

SCR 20:1.6 Confidentiality of information

(a) A paralegal shall not reveal information relating to a client unless the client consents and after consultation with the attorney, except for disclosures that impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c) and (d).

(b) After consultation with the attorney, a paralegal shall reveal such information to the extent the paralegal reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the paralegal reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

(c) After consultation with the attorney, a paralegal may reveal such information to the extent the paralegal reasonably believes necessary:

(1) to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the paralegal's services had been used.

(2) to establish a claim or defense on behalf of the paralegal in a controversy between the paralegal and the client, to establish a defense to a criminal charge or civil claim against the paralegal based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the paralegal's assistance in the representation of the client.

(d) This rule does not prohibit a paralegal from revealing the name or identity of a client to comply with ss. 19.43 and 19.44, Stats. 1985-86, the code of ethics for public officials and employees.

SCR 20:1.8 Conflict of interest: prohibited transactions

(a) A paralegal shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless, with the attorney's knowledge and consent:

- (1) the transaction and terms on which the paralegal acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
 - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (3) the client consents in writing thereto.
- (b) The paralegal shall not use information acquired during the attorney's representation of a client to the disadvantage of a client unless the client consents after consultation with the attorney.
- (c) Prior to the time the attorney concludes his or her representation of a client, a paralegal shall not make or negotiate an agreement giving the paralegal literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (d) (1) in this paragraph:
- (i) "Sexual relations" means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the paralegal.
 - (ii) If the client is an organization, "client" means any individual who oversees the representation and gives instructions to the paralegal on behalf of the organization.
- (2) A paralegal shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the paralegal-client relationship commenced.
- (3) In-house paralegals representing governmental or corporate entities are governed by SCR 20.1.7 (b) rather than by this paragraph with respect to sexual relations with other employees of the entity they represent.

SCR 20:1.10 Imputed disqualification: general rule

- (a) When a paralegal becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that paralegal, or a firm with which the paralegal was associated, had previously represented a client whose interests are materially adverse to that person and about whom the paralegal had acquired information protected by Rules 1.6 and 1.9 (b) that is material to the matter.
- (b) When a paralegal has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interest materially adverse to those of a client unless:
- (1) the matter is the same or substantially related to that in which the formerly associated paralegal worked on; and
 - (2) Any paralegal remaining in the firm has information protected by Rules 1.6 and 1.9 (b) that is material to the matter?
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

SCR 20:1.11 Successive government and private employment

- (a) Except as law may otherwise expressly permit, a paralegal shall not assist in

the representation of a private client in connection with a matter in which the paralegal participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No attorney in a firm with which that paralegal is associated may knowingly undertake to continue representation in such a matter unless:

(1) the disqualified paralegal is screened from any participation in the matter; and
(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a paralegal having information that the paralegal knows is confidential government information about a person acquired when the paralegal was a public officer or employee, may not assist in the representation of a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that paralegal is associated may undertake or continue representation in the matter only if the disqualified paralegal is screened from any participation in the matter.

(c) Except as law may otherwise expressly permit, a paralegal serving as a public officer or employee shall not:

(1) participate in a matter in which the paralegal participated personally and substantially while employed in nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the paralegal's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the paralegal is participating personally and substantially.

(d) As used in this rule, the term "matter" includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

Municipal judge

SCR 20:1.12 Former judge or arbitrator

(a) A paralegal shall not assist in the representation of anyone in connection with a matter in which the paralegal participated personally and substantially as a judge or other adjudicative officer.

(b) Except as stated in paragraph (e), a paralegal shall not assist in the representation of anyone in connection with a matter in which the paralegal participated personally and substantially as an arbitrator or as a clerk to a judge,

other adjudicative officer or arbitrator, unless all parties to the proceeding consent after disclosure.

(c) A paralegal shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the paralegal is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A paralegal serving as a clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the paralegal has notified the judge, other adjudicative officer or arbitrator.

(d) If a paralegal is disqualified by paragraph (a) or (b), no attorney in a firm with that paralegal is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified paralegal is screened from any participation in the matter; and
(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(e) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

SCR 20:3.1 Meritorious claims and contentions

(a) In assisting the attorney in the representation of a client, a paralegal shall not:

- (1) knowingly advance a claim or defense that is unwarranted under existing law, except that the paralegal may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;
- (2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
- (3) take action on behalf of the client when the paralegal knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

SCR 20:3.2 Expediting litigation

A paralegal shall make reasonable efforts to expedite litigation consistent with the interests of the client.

SCR 20:3.3 Candor toward the tribunal

(a) A paralegal shall not knowingly:

- (1) make a false statement of fact or law to a tribunal;
- (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) fail to disclose a fact to a tribunal legal authority in the controlling jurisdiction known to the paralegal to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) assist the attorney in the offering of evidence that the paralegal knows to be false. If a paralegal becomes aware of material and false evidence, the paralegal shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

SCR20: 3.4 Fairness to opposing party and counsel

A paralegal shall not:

- (a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A paralegal shall not counsel or assist another person to do any such act;
- (b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) In pretrial procedure, assist in the making of a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the paralegal reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

SCR 20:3.5 Impartiality and decorum of the tribunal

A paralegal shall not:

- (a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) Communicate ex parte with such a person except as permitted by law; or
- (c) Engage in conduct intended to disrupt a tribunal.

SCR 20:3.6 Trial publicity

- (a) A paralegal shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the paralegal knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding.
- (b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter tribal to a jury, a criminal matter, or any other proceeding that could result in deprivation of liberty, and the statement relates to:
 - (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
 - (2) in a criminal case or proceeding that could result in deprivation of liberty, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
 - (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
 - (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in deprivation of liberty;

(5) information the paralegal knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) Notwithstanding paragraphs (a) and (b) (1-5), a paralegal involved in the investigation or litigation of a matter may state without elaboration:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identify of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case:

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

SCR 20.3.7 Paralegal as witness

(a) A paralegal shall not assist an attorney at a trial in which the paralegal is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) without the paralegal's assistance a substantial hardship to the client would result.

SCR 20:3.9 Advocate in Nonadjudicative Proceedings

A paralegal representing a client, under the direction of an attorney, before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4 (a) through (c), and 3.5.

SCR 20:3.10 Threatening criminal prosecution

A paralegal shall not present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter.

SCR 20:4.1 Truthfulness in statements to others

In the course of assisting the attorney, a paralegal shall not knowingly:

- (a) make a false statement of a material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

SCR 20:4.2 Communication with person represented by counsel

A paralegal shall not communicate about the subject of the representation with a party the paralegal knows to be represented by another attorney in the matter, unless the paralegal has the consent of the other attorney or is authorized by law to do so.

SCR 20:4.3 Dealing with unrepresented person

In dealing on behalf of a client with a person who is not represented by counsel, a paralegal shall not state or imply that the paralegal is disinterested. When the paralegal knows or reasonably should know that the unrepresented person misunderstands the paralegal's role in the matter, the paralegal shall make reasonable efforts to correct the misunderstanding.

SCR 20:4.4 Respect for rights of third persons

In assisting the attorney, a paralegal shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

SCR 20:6.1 Pro bono publico service

A paralegal should support and participate in the provision of pro bono services under the supervision of an attorney. A paralegal may discharge this responsibility by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

SCR 20:7.1 Communications concerning a paralegal's services

- (a) A paralegal shall not make a false or misleading communication about the paralegal services. A communication is false or misleading if it:
 - (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
 - (2) is likely to create an unjustified expectation about the workload the paralegal can complete, or states or implies that the paralegal can achieve results by means that violate the Rules of Professional Conduct or other law;
 - (3) compares the paralegal's services with other paralegal's services, unless the comparison can be factually substantiated; or
 - (4) contains any paid testimonial about or paid endorsement of, the paralegal without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) Any communication made pursuant to this rule shall include the name of at least one paralegal responsible for its content.

SCR 20:7.2 Advertising

(a) Subject to the requirements of Rule 7.1, a paralegal may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through direct-mail advertising distributed to assist an attorney and the provision of cost effective legal services.

(b) A paralegal shall not give anything of substantive value to a person for recommending the paralegal's services, except that a paralegal may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit paralegal referral service or other similar organization.

SCR 20:7.3 Communication of fields of practice

A paralegal may communicate to attorneys that the paralegal specializes in a particular field of law based on education and or experience.

SCR 20:7.5 Firm names and letterheads

(a) A paralegal shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a paralegal in a free-lance practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) The name of a paralegal holding a public office shall not be used in the name of a paralegal firm, or in communications on its behalf, during any substantial period in which the paralegal is not actively and regularly practicing with the firm.

(c) Paralegals may state or imply that they provide services in a partnership corporation or other organization only when that is the fact.

SCR 20:8.1 Disciplinary matters

A paralegal in connection with a disciplinary matter shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from the disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

SCR 20:8.3 Reporting professional misconduct

(a) A paralegal having knowledge that another paralegal has committed a violation of the Rules of Professional Conduct that raises a substantial question as

to that paralegal's honesty, trustworthiness or fitness as a paralegal in other respects, shall inform the appropriate professional authority.

SCR 20:8.4 Misconduct

It is professional misconduct for a paralegal to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the paralegal's honesty, trustworthiness or fitness as a paralegal in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) State or imply an ability to influence improperly a government agency or official;
- (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (f) Violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of paralegals; or
- (g) Violate the paralegal's oath.

Wisconsin Supreme Court Rule 20:5.3 currently addresses the responsibilities of attorneys regarding nonlawyer assistants:

SCR 20:5.3 Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The

measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Wyoming

Definition: None

Mandate attempted: No

Wyoming State Bar
500 Randall Avenue
Post Office Box 109
Cheyenne, WY 82003-0109
Phone: (307) 632-9061
Fax: (307) 632-3737
Web Address: <http://www.wyomingbar.org>

Paralegal Associations:

NALA Affiliate: Legal Assistants of Wyoming (LAW)
Post Office Box 155
Casper, WY 82602
Email: law@lawyo.com-email
Web: <http://www.lawup.com>

NFPA Affiliate: Rocky Mountain Paralegal Association (RMPA)
Post Office Box 481864
Denver, CO 80248-1864
Phone: (303) 370-9444
Email: webmaster@rockymtnparalegal.org
Web: <http://rockymtnparalegal.org>

Discussion:

No entity in Wyoming has established a definition of *paralegal/legal assistant*, but a task force has been convened to address *nonlawyer* services (Wyoming State Bar, 2002). The Multidisciplinary Task Force (MTF) was established in August of 1999, to address the concerns identified by the ABA at its August 1999 annual meeting (Wyoming State Bar). Among the concerns cited were nonlawyers offering legal services. The MTF reported that the Commission on Multidisciplinary Practice of the ABA did not recommend permitting nonlawyers to deliver legal services (Wyoming State Bar Multidisciplinary Task Force, 2002). Their report included a recommendation to revise Wyoming Court Rules to “consistently and uniformly enforce the

prohibition of the Wyoming State Bar against multi-disciplinary practice in the State of Wyoming” (p. 7).

Currently, the court rule that addresses lawyers’ use of nonlawyer assistants is Rule 5.3 of Wyoming Professional Conduct:

Rule 5.3. Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies, the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment -- Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

VITA

Lou Don Bishop was born on December 1, 1952, in Nevada, Missouri. She attended Virginia Polytechnic Institute & State University and received a B.S. in Mathematics Education in 1974 and an M.A. in Education – Curriculum & Instruction in 1976. She earned a Paralegal Certificate from Virginia Western Community College in 1989.

Lou Don has numerous teaching experiences. From 1974 to 1977 she taught Mathematics in Pulaski County Public Schools. In addition, she was an adjunct instructor in the Business Department at New River Community College from 1976 to 1984, teaching Business Mathematics. Remaining at the community college from 1996 through current date, she teaches law-related classes in the Business & Technology Department. Classes include: Legal Research & Writing, Introduction to Law, Real Estate Law, Law Office Management & Accounting, Virginia & Federal Procedure, Trial Preparation, Torts, and Estates & Probate.

Lou Don maintains a current Virginia postgraduate professional teaching license with a mathematics endorsement. She serves on the NRCC Paralegal Specialization Advisory Committee.