

NFPA Informal Ethics and Disciplinary Opinion No. 2000-1

The following opinion of the National Federation of Paralegal Associations (NFPA) applies and interprets provisions of the NFPA Model Code of Ethics and Professional Responsibility (adopted 1997) and is intended for the guidance of paralegals in their professional activity. It should be interpreted in conjunction with applicable court rules and opinions governing the professional conduct of members of the legal profession with whom the paralegal practices.

Question: What language relating to a paralegal's education, training, experience or recognition can be included in advertising to the general public? Specifically, can paralegals advertise that they are "state certificated" because they received a certificate from a paralegal training program in a particular state taught at a state supported institution?

Answer: Under Ethical Consideration 1.7(c) of the NFPA Model Code of Ethics and Professional Responsibility, a paralegal may include in advertising material statements of fact that are not false, fraudulent or misleading. Paralegals are cautioned that any reference to certification should provide sufficient descriptive information to assure that a potential user of the paralegal's services will not be misled as to the significance or implications of any claimed certificate. In the absence of a government-sponsored, government-administered or court-approved program that recognizes certification, appending the name or abbreviation of a jurisdiction to the certificate in question would constitute a misleading statement, and is therefore prohibited.

Discussion: The concept of "truth in advertising" is as applicable to the rendering of professional services by paralegals as it is to any other profession or trade. Consumers are familiar with the concept of certification, and commonly understand a claim of certification to imply that the entity providing the certificate has established certain minimum standards that must be met by anyone interested in obtaining the certificate in question.

"Certificated" or "certified" has a particular meaning in many professions and industries. For example, teachers must be certified by the state in which they teach. The FAA certifies flight instructors, aircraft engines, repair facilities and aircraft maintenance workers. Systems Engineers are certified by Microsoft in order to maintain Microsoft systems. Nursing assistants are certified by the state in order to perform certain health care functions.

In each of these cases, a recognized body issues the certificate and the standards for certification are uniform within the respective industry. In most cases, individuals desiring certification are inspected or reviewed annually to maintain certification. Continuing education is also mandatory. In each of these professions or industries, the term "certificated" or "certified" sets minimum standards that are known to those in the industry.

The same is not true for the paralegal profession. Requirements for a certificate of completion from a paralegal training program may differ even within a state. Although the state may fund a particular learning institution and require certain standards for instructors, testing, attendance and the like, the certificate provided by one institution may require totally different entrance standards, course hours for completion, and class requirements.

Advertising oneself as "certificated" or "certified" by a particular state based on the fact that the institution providing the certificate is located in that state would be misleading. Such advertising leads a potential consumer to believe that the state, as a governmental entity having an interest in the protection of its residents, has conducted an evaluation of the qualifications and determined that the paralegal deserves to be identified as having met its standards. It may even be understood by the consumer to signify that the state has undertaken responsibility for monitoring, and if necessary, censuring or withdrawing certification from an individual who does not continue to measure up to the state's standards of behavior. This expectation on the part of the consumer is all the more likely to arise because, as discussed above, certificate programs exist in a wide variety of areas familiar to the public. A consumer logically presumes that when a state grants certification it is maintaining uniform standards, and that there are consequences for the professional if these standards are not adhered to.

Although there are accrediting bodies for educational institutions and the ABA has an approval process for paralegal training programs, to date we are unaware of any uniform state or federal standards for training and evaluation of paralegals. Therefore, any statement made in advertising a paralegal's services that creates the misimpression that a governmental entity has taken some kind of action would be dishonest. Advertising completion of an "ABA Approved" program is acceptable, as is including the designation RP or CLA.

Indemnification of NFPA: By making a request to the National Federation of Paralegal Associations for an opinion and/or recommendation concerning proper conduct for a member of the legal profession as it pertains to ethical conduct, obligations, utilization and/or discipline of paralegals, the inquirer and her/her employers, employees, agents and representatives agree to indemnify, hold harmless, and defend NFPA, its Officers, Directors, Coordinators, Ethics Board and Managing Director from any claims arising from any act or omission of NFPA except those occasioned by NFPA's willful or deliberate acts.