

Perspective on the Paralegal Profession

This is an outline of a 1996 presentation made by:

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1. **Current Definition and Types of Paralegals**

- **Definition** "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." (National Federation of Paralegal Associations, 1987.)
- **Preferred Term for Profession:** Historically, paralegals have been referred to as *paralegals* or *legal assistants* depending upon their geographical location or employer's preference; the terms are synonymous and used interchangeably. In November 1995, the National Federation of Paralegal Associations (NFPA) adopted the term *Paralegal* as the preferred term for the profession. NFPA members identified several recent trends in the paralegal profession including court decisions awarding higher fees to attorneys employing persons called *paralegal* instead of *legal assistant*, the ABA Commission on Non-Lawyer Practice's latest report using *paralegal* almost exclusively, and several paralegal associations changing their names to *paralegal* from *legal assistant*.
- **Traditional Paralegals:** provide services with supervision of or accountability to an attorney
 1. Employed: employed, full- or part-time, by an attorney, law firm, corporation, governmental agency, or other legal entity.
 2. Contract, also known as freelance: retained by an attorney or legal entity to perform paralegal work on a case-by-case basis; usually possesses many years of paralegal experience or specialized expertise.
 3. Temporary: employed by attorney through a temporary placement agency.
- **Independent Paralegals:** provide services to consumers in regard to process in which law is involved and for whose work no lawyer is accountable
 1. Special Advocate - authorized by the court to participate in court proceedings involving specified classes of parties or cases.
 2. Agency Representative - authorized by statute or agency rule to represent clients in agency proceedings.

2. **Emergence of Paralegal Profession - 1968**

- **American Bar Association Standing Committee on Legal Assistants (SCOLA):** SCOLA was first created in 1968 as the Special Committee on Lay Assistants for Lawyers. The original committee was charged with developing, encouraging and increasing the training and utilization of nonlawyer assistants to enable lawyers to discharge their professional responsibilities more effectively and efficiently.

In 1971 the Committee became the Special Committee on Legal Assistants. It conducted studies of the duties performed by paralegals in large and small law firms throughout the country, undertook a pilot project for on-the-job training of paralegals, and completed a study of the use of paralegals in other professions. The Special Committee then began to develop a curriculum for the training of paralegals by educational institutions.

In 1972 the ABA House of Delegates asked the Special Committee to develop standards for accreditation of formal educational programs directed to the training of legal paraprofessionals and to conduct an assessment of the proficiency of legal paraprofessionals. Following careful study of similar accreditation activities in other disciplines, the Special Committee developed guidelines, evaluative criteria, and program evaluation procedures and submitted them to the House of Delegates for consideration.
- **ABA Approval Commission:** In 1973 the House of Delegates approved the *Guidelines for the Approval of Legal Assistant Education Programs* and authorized the Special Committee to begin implementation of the approval program. The following year a pilot project was conducted to test the approval procedures, after which refinements were made. In August 1975 the House of Delegates changed the status of the Committee from Special to Standing and officially approved the first eight paralegal training programs under the *Guidelines*.

The ABA approval process for paralegal education programs is a voluntary procedure by which an educational institution seeks recognition of its paralegal education program. ABA approval gives programs credibility and acceptability with attorney/employers, the public, prospective students and school administrators. There is no other independent, autonomous entity able or willing to be responsible for the process. ***Approval should not be confused with accreditation;*** *accreditation* usually indicates some form of official governmental sanction for educational institutions. Currently, there are 206 ABA-approved paralegal education programs nationwide.

An ABA-approved program curriculum must include a general education component of 36 credits and a minimum of 18 credits in legal specialty courses such as legal research, civil litigation, bankruptcy, estates and trusts, family law, or real estate. These courses should emphasize the practical skills paralegals utilize, and do not include courses with theoretical emphasis, such as business law, constitutional law, or criminal justice.

- **National Federation of Paralegal Associations (NFPA):** NFPA is a non-profit professional organization made up of state and local paralegal associations throughout the United States and Canada. Founded in 1974, NFPA is a federation of 60 member associations with over 17,500 individual members. For more information regarding NFPA, its history and the definitions of a paralegal, see "**NFPA - The Paralegal's Partner in Progress**" brochure. NFPA has had a national voice for the members of the paralegal profession for over 21 years.
- **National Association of Legal Assistants (NALA):** an organization founded in 1975 made up of individual members and affiliated associations (requiring only one member of the affiliated association) located primarily in the south and southwestern portions of the nation.

3. **Evolution of Paralegal Education** (*A paralegal who obtains formal paralegal education is referred to as certificated, not certified.*)

- **Early to mid-1960s:** in-house training, often provided to experienced legal secretaries
- **1970s to mid 90s:** emergence of diversified paralegal educational programs
 1. Certificate programs
 2. Two-year degree awarding A.S. or A.A. in paralegal studies
 3. Four-year degree awarding B.A. or B.S. in paralegal studies
 4. Post-baccalaureate programs
- **1980s:** formation of American Association for Paralegal Education (AAfPE) - a professional association for paralegal education programs and the individual educators who are associated with paralegal training. Publishes the Journal of Paralegal Education, an annual publication with articles addressing paralegal issues.
- **1990s:** emergence of paralegal and paralegal-related masters degree programs.
- **National Federation of Paralegal Associations Suggested Curriculum for Paralegal Studies**(© *National Federation of Paralegal Associations, Inc., 1995. All rights reserved.*):
 1. General Education Requirements: 24 semester hours at the college level encompassing the following areas: English composition/grammar (*Extensive experience in grammar and composition is important for paralegals.*); mathematics; logic/philosophy; speech/communication; earth or natural science; political science/history; sociology; and humanities, including philosophy. The following areas are desirable electives: business (*Only Accounting, Business Communication and Personnel Management courses are desirable.*); computer science/literacy; foreign language; psychology; and economics.

2. **Legal Specialty Requirements:** 24 semester hours with exposure to the following theory/practice areas: litigation/civil procedure; legal research and writing; real property transactions; business and corporate law; wills, trusts and estate planning; family law; torts; and contracts. Exposure to the following theory/practice areas may be beneficial, depending on the legal market: advanced legal research and writing; advanced litigation/civil procedure; bankruptcy, debtor/creditor rights; administrative law; pension/profit sharing; law office economics and management; tax law; labor relations/employment law; intellectual property; criminal law; immigration law; social security law; constitutional law; environmental law; and elder law. An introductory course to law for paralegals may provide exposure to some of these practice areas.
3. **Other Recommendations:** programs are strongly encouraged to have a separate course on ethics and professional responsibility. If a separate course is not taught, ethics and professional responsibility should be taught across the curriculum. Additionally, computer applications should be taught across the curriculum. Intern/externships are strongly encouraged.
4. **Recommended Educational Criteria for Entrance into Profession:** based upon current hiring trends, **NFPA recommends that future practitioners should have a four-year degree to enter the profession.** Students receiving a formal paralegal education should have 24 semester hours or the equivalent of legal specialty courses. NFPA is committed to the concept of standardizing paralegal education to meet the needs of future practitioners while allowing sufficient latitude for local creativity and innovation in the curriculum. Current local, state and national trends, illustrated through various studies and surveys, indicate that a four-year degree is the hiring standard in many markets. NFPA recognizes that employers have the discretion to waive educational criterion to meet a specific hiring trend; however, NFPA modified its position in November 1995 to provide this guidance to students entering the profession.
5. **Indicators for Predicting Future Trends:**
 1. Findings of the 1995 NFPA Paralegal Compensation and Benefits Survey reveals that nationwide: the average paralegal is female: 94%; Caucasian: 95%; 38 years old; possesses a Bachelors degree: 54%; obtained education in paralegal studies 85%; obtained paralegal education from an ABA-approved program 64%; works for a law firm 71%; and has been employed as a paralegal for 7-10 years.
 2. 1995 Survey of Legal Assistant Managers Association (LAMA) reveals that three-fourths of LAMA's membership strongly support a four-year education standard. When

asked in the 1995 issues survey whether the four-year degree should be alone or included with an ABA or non-ABA approved education, 40% responded the four-year degree should be combined with a certification. 20% of whom stated they preferred an ABA-approved certification. The remaining 40% stated a certification alone was acceptable.

3. 1993 Survey in *Legal Assistant Today* stated that 51.7% of respondents had a bachelors degree.

4. Employment Opportunities

- **Demand for Paralegals:** In the early 1980s the U.S. Department of Labor told the nation that the paralegal profession was the fastest growing profession and that by the year 2000, there would be 100,000 paralegals in the nation. According to predictions released in 1995 by the Department of Labor, **by the year 2005 there will be between 150,000 and 176,000 paralegals** in this nation.
- **Types of Employers:** law firms, corporations and corporate legal departments, financial institutions, insurance companies, real estate and title agencies, state and federal governmental agencies, courts, public defenders' and prosecutors' offices, public utility companies, publicly, funded legal service projects and community legal service programs. The number of contract paralegals is on the rise on a national level, but more dominant in large metropolitan cities.
- **Locating Prospective Paralegal Employees:**
 1. Paralegal association job bank services - usually advertise employment opportunity. Some associations handle job bank inquiries by advertising offering, in their newsletters; others send employment listings only to registered job bank members.
 2. Classified advertisements in local newspaper.
 3. Currently employed paralegals - attorneys may consider asking paralegals in their employ to recommend potential candidates.
 4. Paralegal educational institutions' career placement services department.
 5. Resumes received through blind mailings.
 6. Employment agencies.
- **National Compensation and Benefits**
 1. An American Bar Association 1984 survey indicated that the average paralegal salary was \$20,500 in the public sector and \$27,700 for those employed by the federal government.
 2. Paralegal specialists hired by the federal government in 1991 had starting salaries from \$17,000 to \$21,000 a year, depending upon their education and experience.

3. NFPA 1993 survey results revealed that salaries range from \$10,000 to \$84,000 with the average \$29,607. Entry level salaries averaged 18,000 to \$20,000, with paralegals possessing three to five years experience at \$28-31,000. Bonuses averaged \$1,565. Employers paid life and health insurance benefits as well as paralegal professional dues.
 4. 1995 Findings of Paralegal Compensation and Benefits Survey revealed the following national average: Salary - \$32,875; bonus - \$ 1,869; 86% of the respondents receiving benefits including: 91% vacation; 80% paid sick leave; 70% life insurance; 54% fully paid medical; 45% pension or retirement plan; 63% 401K-type savings plan. The average billing rate of the respondents is \$41-80.
 5. Results from a recent Compensation in Legal and Law Related Jobs (non-law firms) survey conducted by Abbott, Langer & Associates stated the median salary for paralegals is \$36,500, with 10% making over \$51,000.
 6. According to the July 1994 *Law Office Management & Administrator Report*, exempt paralegals average \$32,798 per year and non-exempt paralegals average \$30,312.
- **Exempt/Non-Exempt [from Overtime Compensation] Status for Paralegals:** On September 22, 1994, the United States Department of Labor (DOL) abandoned its appeal with prejudice in *DOL v. Page & Addison P.C.*, U.S. Dist. Court, Northern District of Texas, Dallas Division No. 3:91-CV-3655-P (Page & Addison). There will be no written Fifth Circuit Court decision filed in New Orleans Appellate Court No. 94-10435 affirming or overturning the district court's jury finding that 23 paralegals at the ten-lawyer firm are exempt from the overtime requirements of the Fair Labor Standards Act enacted in 1938 (FLSA). The jury's decision entered on March 10, 1994, is binding. Its decision is based upon the administrative exemption as set forth in 29 CFR 541.1 and 541.101 through 541.119. Exempt status applies to Page & Addison's paralegals because each one was found to exercise independent judgment and discretion when she performed her duties and fulfilled her responsibilities, even though a supervisory attorney approved or rejected the paralegal's work.

5. Paralegal Roles and Responsibilities

- **Opportunities for Expanding Roles:** through continuing education, expanded experience, increased responsibility and increased challenge
- NFPA 1995 survey results revealed that the areas of paralegals' greatest satisfaction were attorney contact (36%) and responsibility (35%).
- **Solutions:**
 1. If attorneys understand the nature of education that qualifies paralegals to perform legally substantive tasks, attorneys can

delegate more challenging tasks and increased responsibility to paralegals.

2. If attorneys understand the complex level of legal work paralegals are capable of performing, attorneys can utilize paralegal services better and recognize paralegals as respected members of the legal team.
3. If attorneys understand that through providing continuing legal education to paralegals means, their knowledge and capabilities will improve, the CLE can be linked directly to the quality and quantity of work produced.

○ **Economic Benefits of Utilizing Paralegal Services**

1. When paralegals perform specifically delegated and supervised legally substantive work, attorneys are able to concentrate on more complex legal work.
2. Productivity is increased through utilizing paralegal services.
3. Cost efficiency is maximized through utilizing paralegal services -- attorneys save their clients money by utilizing paralegal services.

- **Future Trends:** As standards for the paralegal profession -- qualifications, responsibilities and regulation -- are established and recognized, paralegal roles and responsibilities will be expanded. Technological advances such as the Internet will create new roles for paralegals in assisting attorneys to conduct more cost-efficient research and produce more specialized presentations.

○ **Ethical Obligations**

- A lawyer who has direct supervisory authority over a paralegal must make reasonable efforts to ensure that the paralegal's conduct is compatible with the professional obligations of the lawyer. An attorney is subject to disciplinary procedures for ethical violations committed by the paralegal. Check your state and local authorities on this matter.
- **Model Guidelines for the Utilization of Legal Assistant Services**, A.B.A. (1991). Although directed to attorneys rather than paralegals, the *Guidelines* address the professional responsibility issues with which both need to be concerned.
- **As to Paralegals:** Currently, there is no *legally-binding* authority which governs paralegals' professional responsibilities, nor are there disciplinary procedures to which paralegals are subject. Paralegals believe that they are bound to ethical obligations, including those applying to attorneys. Prior and subsequent to publication of the ABA *Guidelines*, several states enacted ethical guidelines that apply to paralegals. In addition, Indiana and Kentucky's supreme courts have limited statutory authority in this area. *But see, In Re Opinion No. 24 of the Committee on the Unauthorized Practice of Law*, 128 N.J. 114, 607 A.2d 962 (Sup. Ct. 1992).
- **Paralegal association-promulgated:**

1. **National Federation of Paralegal Associations:** adopted *The Affirmation of Professional Responsibility* and subsequently, a *Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement*. See "[NFPA Model Code.](#)"
 2. NFPA Ethics Board - accepts inquiries on paralegal ethics and disciplinary matters from attorneys, paralegals and other members of the legal community.
 3. The National Association of Legal Assistants adopted a *Code of Ethics and Professional Responsibility*, most recently revised in 1988.
- **Prohibitions on paralegal activity:**
 1. May not negotiate, set or accept a fee on behalf of an attorney; and
 2. May not represent a client in court or other formal legal proceeding, including at a deposition, unless administratively or statutorily authorized to do so; and
 3. May not sign a pleading or legal document; and
 4. May not give substantive or procedural legal advice.
 - **Areas of Particular Concern:** confidentiality agreements, illusory supervision, unauthorized practice of law and conflicts of interest
 - Cumulatively, with a few exceptions, court decisions and opinions of bar associations have held the following or, in the instance of a recent challenge, have not disputed the following:
 1. That a paralegal may not engage in the unauthorized practice of law nor give legal advice;
 2. That a paralegal must maintain the confidences and secrets of the client;
 3. That the attorney-client privilege also extends to paralegals;
 4. That the attorney work product privilege extends to paralegals;
 5. That paralegals may be identified on and use business cards;
 6. That paralegals may sign ministerial correspondence so long as they include their title and that title is not misleading, deceptive, fraudulent nor false;
 7. That a firm, corporation or agency will be disqualified from representing the client or handling the client's legal matters for failing to screen and/or disclose a conflict of interest involving a paralegal and/or erecting an ethical wall in the instance of a conflict of interest involving a paralegal;
 8. That paralegals may erect an ethical wall in instances when a conflict of interest involving the paralegal exists;
 9. That paralegal time is compensable at market rate in an attorney's application for fees if the paralegal is qualified, the work was substantive in nature and recorded with

sufficient detail. Supporting information must be submitted with the application, *e.g.*, the paralegal's resume, time records and information concerning the market rate for the geographical area, specialty practice area and level of paralegal experience;

10. That a paralegal may be identified on attorney letterhead, advertisements, brochures, etc.

6. Paralegal Regulation

○ Mechanisms for Regulating Paralegals

0. Supreme Court, *e.g.*, UPL committees or task forces
1. State or Local Bar Associations, *e.g.*, development of guidelines for utilization (*In 1992, the ABA Commission on Nonlawyer Practice was created to gather information on the delivery of legal services to analyze and formulate recommendations. The Commission released its Report with Recommendations in 1995. Which is expected to be presented to the Board of Governors at the 1996 Mid Year Meeting for adoption.*)
2. Legislature, *e.g.*, legislation to license nonlawyer providers of legal services to perform limited duties
3. Court Rules, Statutes and Administrative Regulations, *e.g.*, 38 federal agencies, such as the SSA and IRS, permit nonlawyers to perform certain tasks otherwise prohibited
4. Case Law, *e.g.*, cases that prohibit paralegals from performing certain tasks, such as representing a client at a deposition

○ Elements of Regulating Paralegals

0. Ethical obligations and disciplinary procedures
1. Minimum criteria for education
2. Regulatory scheme

○ Processes of Regulating the Paralegal Profession

0. *Regulation* - a generic term that encompasses all processes granting authority for recognition to an individual or institution.
1. *Registration* - the process by which individuals or institutions list their names with an association or agency. Registration may be voluntary or mandatory. There are usually no educational or training requirements, although references or bonding requirements are sometimes necessary.
2. *Licensure* - the process by which an agency or branch of government grants permission to persons meeting predetermined qualifications to engage in a given occupation and/or use a particular title or grants permission to institutions to perform specified functions.
3. *Limited Licensure* - a process by which a governmental entity grants authority to nonlawyers to assume roles that are customarily but not exclusively, performed by lawyers.
4. *Certification* - 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. Such qualifications may include graduation from an accredited program, acceptable performance on a qualifying examination or series of examinations, and/or completion of a given amount of work experience.

5. *Accreditation* - a voluntary process by which an agency or organization evaluates and recognizes a program of study or an institution as meeting pre-determined qualifications or standards. The accreditation applies only to their institutions, programs of study or services.
 - On the national level, numerous legislators, state bar association committees and supreme court task forces have addressed the issue of paralegal regulation. None has implemented regulation.
 - **Immediate Future Trend - Paralegal Advanced Competency Exam (PACE):** NFPA recognized the need to establish standards for the paralegal profession. In the fall of 1994, the membership voted to develop an exam to measure the proficiency level of practicing paralegals. The Paralegal Advanced Competency Exam (PACE) is currently being developed by Professional Examination Services, an independent company with test development expertise, and will be administered beginning in June 1996 by Sylvan Technologies. The exam will be two-tiered. Tier I will contain general and ethics questions. State specific sections will be developed. Tier II will contain specialty sections. PACE will provide a fair evaluation of the competencies of paralegals of all practice areas; and create a professional level of expertise by which all paralegals can be evaluated.
 - **Long-Term Future Trend:** Paralegals will be regulated. **See NFPA - The Paralegal's Partners in Progress brochure.** That regulation will be based, hopefully, upon valid and thorough studies of the need for regulation; expand paralegal roles; establish minimum educational criteria for entrance in the profession; determine a method to evaluate paralegal competency; mandate continuing legal education; set forth standards for character and fitness; and establish mandatory ethical obligations with a disciplinary mechanism.
7. **Support Paralegals' Participation in Professional Development**
 - Paralegal Association Membership: provides automatic individual membership in NFPA when you join a member association; subscriptions to the local newsletters and the quarterly NFPA magazine, *National Paralegal Reporter*; conventions that include a business meeting, seminars on a variety of subjects affecting paralegals, and an opportunity to network with colleagues; access to a member-only job bank of employment opportunities (depending on association); access to a local and national repository of information about the profession and the issues surrounding it, such as work-product, unauthorized practice of law, confidentiality, case law, and ethical responsibilities; access to reduced price services that meet the professional needs of paralegals; opportunity to debate and vote

on issues that establish local policy, and opportunity to debate and vote on issues which establish NFPA policy; reduced registration fees for local meetings, CLE seminars and other continuing legal education opportunities; monitoring of legislation that may affect paralegals; a local network of paralegals in most legal specialty areas, a comprehensive membership directory, and a national network among paralegal associations through discussions at NFPA meetings, correspondence, and exchange of newsletters.

- Bar Association Membership: (*Not Available in all Locales*) provides opportunities to interact with members of the bar to increase attorney awareness of paralegal education, roles, responsibilities and utilization; participate on bar association paralegal committees that address issues specific to paralegals in the delivery of legal services; participate in committees, sections or divisions related to a paralegal's specialty area of law, *e.g.*, real estate, matrimonial, litigation, probate; and participate in committees on law office management, *pro bono* legal services, the unauthorized practice of law, legal ethics and issues not directly related to a specialty, but of interest to paralegals.
- Continuing Legal Education Seminars - to increase knowledge and access to resources
 0. Paralegal associations offer regular CLE seminars at association meetings.
 1. Paralegal associations offer regular specialty section seminars, sometimes in areas of law not available in a paralegal education program attended.
 2. Bar association-sponsored CLE can be beneficial for more experienced paralegals.
- Encourage Participation in Pro Bono Activities

What are the Concerns of Individual Paralegals?

- That anyone can call himself or herself a paralegal
- That people can attend "fly-by-night" programs and compete for the same jobs
- That salaries are sufficient to warrant level of education achieved
- That salaries are sufficient to compensate paralegals for the value of the tasks performed
- That paralegals will qualify for regulatory schemes when proposed
- That paralegal work is challenging
- That experienced paralegals have an option to validate their experience and job skills and confirm their value to the legal industry
- That the paralegal profession is independent and self-directed
- That paralegals can contribute to increasing the cost-efficient delivery of legal services

- That paralegals receive recognition of the profession as an integral partner in the delivery of legal services
- That "fly-by-night" paralegal programs cease to exist
- That unscrupulous and unethical members of the paralegal profession be enjoined and restricted from participating in the profession
- That an association offers quality seminars and publications responsive to the needs of paralegals and the legal marketplace, at a reasonable cost

WHY Promote the Paralegal Profession within THE Legal Community?

Economic Benefits of Utilizing Paralegal Services

While paralegals perform specifically delegated and supervised legally substantive work, attorneys are able to concentrate on more complex legal work.

Productivity is increased through utilizing paralegal services.

Cost efficiency is maximized through utilizing paralegal services.

Attorneys save their clients money through utilizing paralegal services.

- If attorneys understand the nature of education that qualifies paralegals to perform legally substantive tasks, attorneys can delegate more challenging tasks and increased responsibility to paralegals.
- If attorneys understand the complex level of legal work paralegals are capable of performing, attorneys can utilize paralegal services better and recognize paralegals as respected members of the legal team.
- If attorneys understand that providing continuing legal education to paralegals means their knowledge and capabilities will improve the CLE and be directly linked to the quality and quantity of work produced.

Greater Bar Respect and Understanding Equals:

Paralegals who accomplish more challenging or complex tasks

Paralegals who accept increased responsibility

Paralegals who improve their knowledge and capabilities

Paralegals who are more valuable to attorneys.

Value equals increased cost-efficiency.

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