



# **Empire State Alliance of Paralegal Associations**

## **POSITION STATEMENT ON THE UNAUTHORIZED PRACTICE OF LAW IN NEW YORK STATE**

*Presented By:  
The Empire State Alliance of Paralegal Associations  
(Unanimously) Adopted February 1, 2003*

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## **PREAMBLE**

**EMPIRE STATE ALLIANCE OF PARALEGAL ASSOCIATIONS**  
**WWW.GEOCITIES.COM/EMPIRESTATEPARALEGALS**  
**EMPIRESTATEPARALEGALS@YAHOO.COM**

*The Empire State Alliance of Paralegal Associations (“ESAPA”) was formed in 1988 in response to the need to strengthen the paralegal profession in New York State through networking. Representatives of member associations meet throughout the year to exchange information and discuss issues affecting the paralegal profession. Member associations include:*

*Adirondack Paralegal Association  
Capital District Paralegal Association, Inc.  
Long Island Paralegal Association, Inc.  
Manhattan Paralegal Association, Inc.  
Onondaga County Bar Association Legal Assistants Committee  
Oswego County Bar Association Legal Assistant Affiliate Members  
Paralegal Association of Rochester, Inc.  
Western New York Paralegal Association, Inc.  
West/Rock Paralegal Association*

## **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. The terms “legal assistant” and “paralegal” are synonymous. (Source: Guidelines for Utilization by Lawyers of the Services of Legal Assistants approved by the New York State Bar Association House of Delegates on June 28, 1997) **Throughout this Position Statement, the term “paralegal” will be used.***

## **POSITION STATEMENT**

The Empire State Alliance of Paralegal Associations and its member associations (“ESAPA”) are concerned with increased unauthorized practice of law activity in New York State. The unauthorized practice of law damages the legal profession and the public it serves.

Misuse of the title “paralegal” and “legal assistant” confuses the public and negatively impacts the paralegal profession. The ESAPA *does not* support paralegals or other non-lawyers who participate in the unauthorized practice of law.

In response to the need to effectively curb the unauthorized practice of law in New York State, the ESAPA has chosen to take a pro-active position on this issue by:

- Investigating and reporting UPL activity
- Participating in legislative activity involving UPL issues
- Developing and expanding working relationships with bar associations and other law-related entities against UPL
- Increasing efforts to educate
  - the public on non-lawyer services
  - attorneys on paralegal utilization
  - paralegals and other non-lawyers on ethical boundaries of non-lawyers and the practice of law
  - acting as an information resource on the paralegal profession

This Position Statement is respectfully submitted for your consideration in an effort to foster continuing dialogue on this issue with those who share the common goal of the delivery of quality legal services by legal professionals in accordance with the laws of the State of New York.

## **UNAUTHORIZED PRACTICE OF LAW (“UPL”)** **AND THE STATE OF NEW YORK**

### **UPL DEFINED OR UNDEFINED**

The “practice of law” has yet to be clearly defined. Ethics Opinion #304 issued in 1973 by the New York State Bar Association (“NYSBA”) Committee on Professional Ethics states:

*“It would be violative of accepted professional standards to delegate to a law clerk studying in a law office under a certificate of clerkship, or to a law school graduate awaiting bar admission, or to a paralegal employee, or to any unlicensed individual any function which calls for the professional judgment of a lawyer.”*

The Opinion further states that the delegation of certain tasks to non-lawyer employees

permitted by EC3-6 and Ethics Opinion #255 issued in 1972 “does not extend to any matter where the exercise of professional legal judgment is required.”

Prohibition of the unauthorized practice of law has been addressed in the NYSBA Code of Professional Responsibility (“NYSBA Code”), court decisions and statutes. New York Judiciary Laws 478 and 484 restrict the practice of law to those who are “regularly admitted to practice, as an attorney or counselor, in the courts of record in the state.”

The *Guidelines for Utilization by Lawyers of the Services of Legal Assistants* approved by the NYSBA House of Delegates on June 28, 1997 (“Guidelines”) include:

#### Guideline II

##### UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not assist a legal assistant in the performance of an activity that constitutes the unauthorized practice of law.

and

#### Guideline III

##### AUTHORIZED PRACTICE OF LAW

A legal assistant may perform certain functions otherwise prohibited when and only to the extent authorized by statute, court rule or decision, or administrative rule or regulation.

Further, the Commentary for Guideline III states:

*“A legal assistant is not engaged in the unauthorized practice of law when acting in compliance with statutes, court rules or decisions, or administrative rules and regulations which establish authority in specific areas for a lay person to appear on behalf of parties to proceedings before administrative agencies.”*

#### PROFESSIONAL ETHICS AND UPL

The NYSBA Code states in Canon 3 that a “lawyer should assist in preventing the unauthorized practice of law.” Paralegals are not directly bound by the NYSBA Code; however, similar principles are recited in the codes of paralegal associations:

National Association of Legal Assistants  
*Code of Ethics and Professional Responsibility:*

Canon 3 -- A legal assistant must not: a. engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law...

Canon 4 -- A legal assistant must use discretion commensurate with knowledge and experience but must not render independent legal judgment in

place of an attorney. The services of an attorney are essential in the public interest whenever such legal judgment is required.

National Federation of Paralegal Associations  
*Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement:*

1.8 A paralegal shall not engage in the unauthorized practice of law.  
EC-1.8(a) A paralegal shall comply with the applicable legal authority governing the unauthorized practice of law in the jurisdiction in which the paralegal practices.

In the *Final Report*, NYSBA *Ad Hoc* Committee on Non-Lawyer Practice, May 1995 (“*Ad Hoc* Committee Report”), the Committee recommended active enforcement of the unauthorized practice of law statute:

The State Bar should encourage continued vigorous activity by the Attorney General and local District Attorneys in enjoining violations of the statutes prohibiting the practice of law without a license.

and

Preventing the practice of law by those unqualified to provide legal services not only safeguards against harm to the public, but enhances the images of attorneys who are licensed to practice law. Those who provide legal services under the guise of non-lawyers, such as disbarred lawyers, document preparers or unregulated legal technicians, are wholly unaccountable for their malfeasance.

## **ACTIONS TO BE TAKEN AGAINST**

### **THE UNAUTHORIZED PRACTICE OF LAW IN NEW YORK STATE**

#### **INVESTIGATE AND REPORT UPL ACTIVITY**

Each ESAPA member association shall investigate UPL activity within its geographic area. If such investigation affirms UPL activity, the ESAPA member association shall report its findings to the local bar association and/or Office of the Attorney General as is customary in the area.

In the event the offender is a member of an ESAPA member association, direct contact

shall be made with the offender to provide education materials and work to halt those activities which constitute the unauthorized practice of law. Inadequate response by the offender shall result in termination of the offender's membership.

**PARTICIPATE IN LEGISLATIVE ACTIVITY INVOLVING UPL ISSUES**

The ESAPA shall monitor legislative activity involving UPL issues. When warranted, it shall establish contact with legislators to state its position against UPL and offer its services as an information resource.

**DEVELOP AND EXPAND WORKING RELATIONSHIPS WITH BAR ASSOCIATIONS  
AND OTHER LAW-RELATED ENTITIES AGAINST UPL**

Each ESAPA member association shall communicate its position against UPL to law-related entities within its local legal community and offer its services as a co-worker in efforts to curb UPL activity. This Position Statement may be distributed for this purpose.

**INCREASE EFFORTS TO EDUCATE THE PUBLIC, ATTORNEYS, PARALEGALS  
AND OTHER NON-LAWYERS**

Each ESAPA member association shall work to increase understanding of the role of paralegals in the practice of law. The Guidelines may be used as an information resource. Further, the ESAPA shall pursue education efforts through the NYSBA, local bar associations and other law-related entities within its local legal community, as recommended in the *Ad Hoc* Committee Report:

4. The Committee recommends the increased use of bar publications and CLE programs to promote the use of paralegals, such as series of articles informing the bar about qualifications, ability and professionalism of legal assistants.

These education efforts may include distributing education materials, organizing and speaking at seminars, and authoring articles for bar association and other legal publications, on topics such as:

- paralegal utilization (generally and by law practice area)
- paralegal ethics (professional codes and NYSBA Ethics Opinions)
- issues surrounding non-lawyer services
- paralegal education standards and programs

- the paralegal profession, past, present and future

**ACT AS AN INFORMATION RESOURCE ON THE PARALEGAL PROFESSION**

The ESAPA shall be the state-wide information resource on the paralegal profession and shall respond to inquiries, distribute information and provide speakers on paralegal utilization. Member associations may be contacted individually or through the ESAPA.

## **CONTACT INFORMATION**

**THE EMPIRE STATE ALLIANCE OF PARALEGAL ASSOCIATIONS**

***WWW.GEOCITIES.COM/EMPIRESTATEPARALEGALS***

***EMPIRESTATEPARALEGALS@YAHOO.COM***

**AND**

**MEMBER ASSOCIATIONS :**

**Adirondack Paralegal Association**

*c/o Lisa M. Bushman  
338 Reynolds Road  
Ft. Edward, NY 12828  
(518) 792-2049*

**Paralegal Association of Rochester**

*P.O. Box 40567  
Rochester, New York 14604  
(585) 234-5923  
[www.par.itgo.com](http://www.par.itgo.com)*

**Capital District Paralegal Association, Inc.**

*P.O. Box 12562  
Albany, NY 12212  
[www.cdpa.info](http://www.cdpa.info)  
[capitaldistrict@paralegals.org](mailto:capitaldistrict@paralegals.org)*

**Western New York Paralegal Association, Inc.**

*P.O. Box 207, Niagara Square Station  
Buffalo, NY 14201  
(716) 635-8250  
[westernny@paralegals.org](mailto:westernny@paralegals.org)*

**Long Island Paralegal Association Inc.**

*1877 Bly Road  
East Meadow, NY 11554  
(516) 357-9820  
[LongIsland@paralegals.org](mailto:LongIsland@paralegals.org)*

**West/Rock Paralegal Association**

*P.O. Box 668  
New City, NY 10956  
[westrock@paralegals.org](mailto:westrock@paralegals.org)*

**Manhattan Paralegal Association, Inc.**

*P.O. Box 4006, Grand Central Station  
New York City, New York 10163  
(212) 330-8213  
[Manhattan@paralegals.org](mailto:Manhattan@paralegals.org)*

**Onondaga County Bar Association Legal Assistants Committee**

*1000 State Tower Building  
Syracuse, NY 13202  
(315) 471-2667  
[www.onbar.org](http://www.onbar.org)*

**Oswego County Bar Association Legal Assistant Affiliate Members**

*c/o Cynthia E. Wade, Paralegal  
Hancock & Estabrook, LLP  
One Mony Plaza  
Syracuse, NY 13202  
(315) 471-3151  
[cwade@hancocklaw.com](mailto:cwade@hancocklaw.com)*