NATIONAL
FEDERATION
of
PARALEGAL
ASSOCIATIONS Inc.

NFPA – The Leader of the Paralegal Profession™

Tracey L.Young, RP
Vice President and Director of Positions & Issues
c/o E. STEWART JONES PLLC
28 Second Street
Troy, New York 12180
(518) 274-5820
VPPI@paralegals.org

August 20, 2010

Delegate Mark Hunt
Room 400M, Building 1
State Capitol Complex
Charleston, WV 25305

Re: Regulation of Paralegals

Dear Delegate Hunt:

The National Federation of Paralegal Associations, Inc. (NFPA) is a non-profit professional organization representing the largest number of individual members in the United States. NFPA would like to take this opportunity to provide you with some information about our Federation and to offer a brief comment on what standards should be implemented in a regulation plan. We would appreciate your consideration of our comments with respect to HB3302, "Certified Legal Assistant Act".

Background

As a member-driven organization, NFPA prides itself on the professionalism of its members and its position as a leader in the profession for over 30 years. NFPA routinely monitors legislation, case law, proposed changes to rules of professional responsibility, and ethics opinions that affect the paralegal profession.

NFPA shares your goals to protect the public by ensuring that those holding themselves out to be paralegals are qualified, properly trained and regulated. NFPA has historically concluded that public protection is of pivotal importance in conjunction with nonlawyer competence and accountability. Consequently, NFPA believes that when adequate protections for the public are in place, nonlawyers have important roles to perform in providing affordable access to justice. Hence, NFPA's position on the regulation of paralegals includes references to the necessary public protection mechanisms.

NFPA members affirm the paralegal profession as a self-directed profession that supports increased quality, efficiency and accessibility in delivering legal services. NFPA promotes growth, development, and recognition of the profession as an integral partner in delivering legal services and supports any activity intended to increase the use of paralegal services for delivering legal services. NFPA believes it is important to emphasize that its members do not endorse or support the unauthorized practice of law.

Post Office Box 2016
Edmonds, WA 98020-9516

p: 425-967-0045
f: 425-771-9588

info@paralegals.org
www.paralegals.org

Paralegals who have passed NFPA's Paralegal Advanced Competency Exam (PACE), as well as many of those in local paralegal and bar associations, have a mandatory continuing legal education requirement, including an ethics component. Many of NFPA's local member associations have also adopted, and their members are subject to, a Code of Ethics and Professional Responsibility. In addition, some jurisdictions have adopted ethical guidelines for paralegals.

Our stated mission is to expand the practice of paralegals. By working with other members of the legal team, educators, the judiciary and legislators, we have and are continuing to expand our profession in a responsible and ethical manner.

Since its formation, NFPA has:

- monitored legislation, case law and researched reports on various issues that could affect the paralegal profession;
- worked with and testified before many organizations such as legislatures, bar association task forces, and court committees on issues related to paralegal participation in delivering legal services and the paralegal profession generally;
- filed *amicus* briefs with courts throughout the United States on several issues that could affect the paralegal profession;
- participated in the ABA's Commission on Non-Lawyer Practice;
- participated in the New Roles and the Law Conference in 1996; and,
- adopted an advanced competency examination, PACE.

Definition

NFPA defines a paralegal as:

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. Substantive shall mean work requiring recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts.

Education and Continuing Legal Education

NFPA believes that education is paramount to the development of the paralegal profession. Since the paralegal profession emerged, education has played an increasingly vital role in development of the profession. As legal matters delegated to paralegals increase in

complexity and paralegal roles are expanded, education remains a critical issue. More than 60% of paralegals responding to NFPA's 2006 Compensation and Benefit Report have formal education in paralegal studies, with more than half of them having obtained a bachelor's degree.

NFPA strongly supports quality paralegal education, as evidenced by its extensive involvement with other national law-related organizations. Since 1986, NFPA has worked with the American Bar Association (ABA), the American Association for Paralegal Education (AAfPE) and others to develop a consensus on the issue of paralegal education. In addition, NFPA has a representative on the ABA Approval Commission, which works with the Standing Committee on Paralegals to evaluate paralegal education programs. These efforts continue and are increasing as consumer and attorney awareness about quality paralegal education heightens, and as activities to regulate paralegals by bar associations, courts, and legislatures escalate.

NFPA recommends that future practitioners should have a four-year degree to enter the profession. NFPA recognizes that a two-year degree with an emphasis in paralegal studies is acceptable to employers in some markets as a minimum criteria for individuals to enter the paralegal profession. However, current trends across the country, as illustrated through various surveys, indicate that formal paralegal education has become a requirement to secure paralegal employment; a four-year degree is the hiring standard in many markets. In recognizing a two-year degree and recommending a four-year degree, NFPA has taken the lead in providing the profession with the necessary tools to prepare for its future role in the delivery of legal services.

Additionally, NFPA's members established a minimum number of hours for continuing legal education, and recommends that NFPA members should aspire to twelve (12) hours of continuing legal education, including at least one (1) hour of ethics education, to be completed every two (2) years.

Paralegal Advanced Competency Exam (PACE)

NFPA recognizes the need to establish standards for the paralegal profession. Therefore, in the Fall of 1994, the membership voted to develop an exam to measure the proficiency level of practicing paralegals. To take the exam, paralegals must meet minimum educational and experiential requirements and must not have been convicted of a felony or had a license, registration or certification revoked. Those who successfully pass the exam are authorized to use the credential "PACE Registered Paralegal®" or "RP."

The purposes of PACE are:

- to provide the groundwork for expanding paralegal roles and responsibilities;
- to provide the public and legal community with a mechanism to gauge the competency of experienced paralegals; and
- to be used in states considering regulation of experienced paralegals.

Paralegals who have passed NFPA's Paralegal Advanced Competency Exam, as well as many of those in local paralegal and bar associations, have a mandatory continuing legal education requirement, including an ethics component.

NFPA Endorses Paralegal Regulation

In 1975, NFPA members adopted the position that it is both necessary and advisable that paralegals retain primary control of the creation of guidelines and standards for the development of the paralegal profession. NFPA also supports participation by members of the legal community, paralegal educators and the public with respect to investigatory and policy-making activities concerning regulation of the paralegal profession.

NFPA recognizes that, since the paralegal profession emerged, the legal profession and the practice of law have undergone significant changes. Society has become more conscious of legal rights and better informed about the legal process. One obvious consequence of these changes is that the line between what constitutes practicing law and what is permissible business and professional activity by nonlawyers is indistinct. Many legal services have become so common and standard that nonlawyer practice in these areas is now woven into the socio-economic fabric of society. Nonlawyers such as title agents, ombudsmen, real estate brokers, accountants, mediators, arbitrators, escrow agents and estate and trust officers are and have been performing these services successfully, satisfactorily, efficiently and less expensively to the public's benefit for years. In the wake of these changes, state legislatures, courts and bar associations are attempting to determine the implications of nonlawyer practice for society, the client and the legal profession.

For over 30 years, NFPA has recognized and accepted its commitment to examine these issues and explore new and innovative means by which legal services of moderate costs may be more generally available. On a national level, NFPA recognizes, as do at least 18 statewide studies and two national studies, that the need for legal services is not being met. NFPA believes that nonlawyers, in particular, paralegals, have important roles to perform in providing affordable access to justice and that paralegals may be qualified to assist to meet those unmet legal needs. This belief is also held by numerous attorneys and allied legal organizations with which NFPA communicates.

NFPA members adopted a position to endorse regulation of paralegals as long as paralegals would be able to do more under the regulatory plan than they were previously doing. NFPA's preferred from of regulation is mandatory licensure but NFPA recognizes that voluntary certification or registration may be appropriate in a given state. NFPA is committed to actively promote regulation of the paralegal profession.

NFPA recommends that any plan for regulation of the paralegal profession include the following:

- Formal education requirements (at minimum an associate's degree in paralegal studies with 60 semester credit hours or equivalent, including a minimum of 24 semester credit hours or equivalent of paralegal specialty courses);
- Passage of a proficiency based exam;
- Meet a standard of character and fitness consistent with what is required to sit for PACE® and to maintain the RP credential;

- Mandatory CLE requirement; and
- A grandparenting provision.

NFPA has developed a Model Act for Paralegal Licensure and a more generic Model Plan for Regulation for assistance in developing and drafting a Paralegal Regulation Plan. Copies of each are provided herewith for your reference.

HB3302 "Certified Legal Assistant Act"

We note that this proposal refers to paralegals as "legal assistants". While historically the terms "paralegal" and "legal assistant" were used interchangeably, the trend in the paralegal profession has been a greater use of and preference for the term *paralegal.* Many paralegal associations have changed their names to reflect this trend, including the Association of West Virginia Paralegals, as has the American Bar Association Standing Committee on Paralegals. We would suggest that any legislation which aims to regulate the paralegal profession use the term "paralegal" instead of, or at least in addition to, the term "legal assistant".

Additionally, with regard to the specific qualifications for certification included in the proposed legislation, NFPA respectfully requests that you include passing the NFPA Paralegal Advanced Competency Exam (PACE) in the minimum qualifications.

Lastly, we request that you consider including other components in the certification proposal such as mandatory continuing legal education (including an ethics component), passage of a proficiency exam and character and fitness standards.

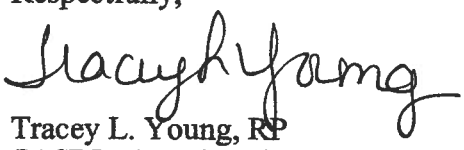
Conclusion

NFPA agrees that nonlawyer activity is best addressed at the state level and, in accordance with its grass roots structure and position on regulation, deems states' rights issues to be dominant in the forum of nonlawyer practice issues, including the regulation of paralegals. The continued existence of unmet legal needs is of paramount concern to lawyers, paralegals and nonlawyers alike. The legal community must strive to provide a greater variety of legal services in order to allow more freedom of choice, easier access to professional services for the public and reduced costs. Any state seeking to regulate non-lawyers is to be commended for attempting to address the access to legal services crisis with the increased utilization of paralegals as an additional level of service providers.

If you have any questions or would like additional information, please feel free to contact me at the telephone number and email address listed above.

Thank you for your attention and courtesy.

Respectfully,



Tracey L. Young, RP
PACE Registered Paralegal®
Vice President and Director of Positions & Issues