

Comments of the NFPA on the June, 1995 Report of the ABA Commission on Practice

The legal profession is on the verge of monumental change and the American Bar Association ("ABA") has the ability to be among the professional leaders involved in making a difference both in the way society views the legal profession and in the way legal services are provided. By accepting the final report of the Commission on Nonlawyer Practice ("the Commission") and bringing it to the floor for discussion, debate and vote at the Mid-Year Meeting in February 1996, the ABA would continue its legacy of action on behalf of those in need.

Over the past thirty years, we have witnessed an explosion in technology and the availability of information. New technology brings information at the touch of a key, the flip of a dial, or the push of button. People now have access to information and news from a global array and the computerized "Information Superhighway" is a reality. The power of computer business and government; it has moved into homes, schools and libraries. The practice of law, similar to many other sectors of our society, has not been impervious to the vast changes witnessed during this period. Society has become more conscious of legal rights and better informed about the legal process. In the wake of these changes, the ABA created the Commission to determine the implications of nonlawyer practice for society, the client and the legal profession. The practice of law has become increasingly focused around substantive specialty areas. In addition, the computer age has allowed the mass production, marketing and standardization of legal services and forms. Consequently, certain legal services have and will continue to become increasingly standardized. There is significant evidence indicating that certain legal services are already described: incorporation of small-businesses and landlord/tenant rights.

More and more legal disputes are being removed from the traditional court system and resolved using alternative methods such as mediation and arbitration, processes in which lawyers' skills are less necessary. In general, consumers are seeking alternative methods of dispute resolution through the use of innovative procedures and demanding less costly legal services.

The 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. 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. So common and standard have these services become, that nonlawyer practice in these areas is now woven into the socio-economic fabric of society.

For over twenty years, the National Federation of Paralegal Associations, Inc. ("NFPA") has recognized and accepted its commitment to examine issues and explore new and innovative means by which legal services of moderate costs may be made more generally available. NFPA is interested in maintaining the achievements paralegals have made as an evolving profession and in developing ways to expand our role in the delivery of legal services as part of the traditional attorney-paralegal team and in other innovative ways. NFPA acknowledges and supports the ABA's rich history of researching and reporting on the issues of access to justice, the needs of low, moderate and middle income persons, and the potential involvement of nonlawyers in the delivery of legal services. The June, 1995 report of the Commission entitled "Nonlawyer Activity in Law-Related Situations" (hereinafter "the Commission Report") clearly reflects the changes taking place, both in the way society views the legal system and in the way it chooses to handle legal problems. The Commission sought and obtained information and comments from various sectors and groups having an interest in the provision of legal services. It is because of this broad-based input that the Commission was able to analyze the diversity of opinions, recognize possibilities for nonlawyer practice, and develop criteria for creating a multi-level delivery system. Many of the opinions expressed by the Commission agree with positions adopted by NFPA.

Overall, NFPA agrees with and supports the three major conclusions made by the Commission. Increasing access to affordable assistance and protecting the public from harm have been the foundation upon which NFPA's positions on paralegal education, ethics and regulation are based. The Commission's conclusion that "when adequate protections for the public are in place, nonlawyers have important roles to perform in providing affordable access to justice is heartily endorsed by NFPA. When those within the legal community begin to envision the potential for a different kind of system rather than remaining locked into tradition, a new and positive sense of enthusiasm will develop, full of the promise and potential yet to be explored.

Yet, as with anything new, risk is a factor which must be considered by those who would identify and implement innovative changes to the current legal system. One of the primary goals of NFPA has been to ensure the widespread availability of quality, low cost legal services. As the profession evolved and the role of paralegals has expanded, NFPA has conscientiously researched and studied issues regarding the delivery of legal services, including methods of paralegal regulation and public protection. NFPA members have reviewed and adopted positions which provide a solid foundation for any plan that would incorporate practice by paralegals in either traditional or non-traditional roles.

Education continues to play a vital role in the development of the paralegal profession. Although "on the job training" remains an important element in developing successful paralegals, formal education has an increasingly important role. Formal education is becoming a requirement, rather than a preferred alternative for entry into the paralegal profession as well as advancing one's career. Formal educational opportunities for paralegals have increased significantly since the profession's inception.

Today there are in excess of 800 formal paralegal training programs throughout the United States. The vast majority of training programs are two year degree programs found in junior colleges or within a four year institution. However, the number of four year degree programs and post baccalaureate certificate programs continue to increase. Additionally, there are at least four institutions which offer masters degrees in paralegal studies.

NFPA has a rich history of supporting quality education for paralegals and recognizes that a two-year degree in paralegal studies is acceptable to employers in some markets as the minimum criterion for individuals to enter the paralegal profession. However, based on recent developments and market trends, NFPA recommends that future practitioners have a four-year degree to enter the profession. Individuals receiving a formal paralegal education should have 24 semester hours or their equivalent of legal specialty courses in order to enhance their ability to practice as paralegals.

NFPA continues to review and assess programs and curriculum to ensure that persons entering the paralegal profession have the necessary knowledge, skills and ability to meet the current demands for legal services and to potentially expand their role in the future. Educational programs for paralegals will continue to evolve in order to prepare graduates to meet the needs of the public and the legal community.

However, education is only one component to be viewed when determining whether and how to expand the role of paralegals. The Commission Report reflects that NFPA endorses adoption of a voluntary certification system for paralegals. **This is wrong.** NFPA members adopted a position to endorse regulation of paralegals as long as the paralegal would be able to do more under the regulatory plan than they were previously doing. Included within NFPA's position on regulation is a preference for a two-tiered licensing plan, which constitutes mandatory regulation, and provisions for, among other things, standards for ethics and education along with a testing component.

NFPA developed and adopted a [Model Code of Ethics and Professional Responsibilities and Guidelines for Enforcement](#) ("NFPA Model Code") to be adopted within local jurisdictions as desired or appropriate. The NFPA Model Code delineates the ethical and professional principals to which all paralegals should aspire. It also expresses the commitment of NFPA's membership to increasing the quality and efficiency of legal services and recognizes the profession's responsibility to the legal community and consumer.

In conjunction with NFPA's position on regulation, members approved the creation of a general examination for the experienced paralegal. The examination was named the Paralegal Advanced Competency Examination ("PACE"). The purposes of PACE are to provide the groundwork for expanding paralegal roles and responsibilities, provide the public and the legal community with a mechanism to gauge the competency of experienced paralegals, and to be used in states that are considering regulation of experienced paralegals and seeking a method to measure job competency. It is not the intention of NFPA members to use PACE as a voluntary certification process. PACE is

to be used in conjunction with a regulatory plan that will permit experienced paralegals to perform at a higher levels of responsibility than now permitted. However, some paralegals may choose to sit for PACE to validate their advanced competency.

NFPA acknowledges and agrees with the points relating to public protection made by Messrs. Seveir and Werner in their minority report. NFPA has historically concluded that public protection is of pivotal importance in conjunction with nonlawyer competence and accountability. Hence, NFPA's position on the regulation of paralegals includes references to the protection mechanisms identified by Messrs. Seveir and Werner. However, NFPA also believes that the issue of public protection must be kept in context with the evaluation criteria provided by the Commission. In determining the level of public protection, it must first be determined what nonlawyers would be doing and the necessary qualifications to do the work. After these two questions have been addressed, the public must be protected at a level which equals the potential for harm by nonlawyer practitioners. NFPA continues to be a proponent for adequate public protection and professional accountability in conjunction with any plan which would permit paralegals and nonlawyers to provide certain legal services.

NFPA generally supports the six recommendations made by the Commission and advocates Recommendations 2, 3 and 5 which specifically relate to paralegal practice. 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.

State statutes, rules and other legislation that prohibit unauthorized practice preclude the ability of nonlawyers to provide information and/or representation in appropriate situations. The legal profession must provide the public with the opportunity to choose different levels of expertise and cost, depending on the type of services needed. The continued existence of unmet legal needs should be 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.

NFPA strongly urges the ABA to: (1) adopt the Commission Report and fund its publication; (2) release the report to the public; and (3) create a multi-disciplinary commission comprised of representatives of allied legal organizations, the public and the various standing committees within the ABA to review, analyze and develop ways to implement the recommendations of the Commission. NFPA would specifically like to see the development of general methods through which to:

- (a) identify traditional and non-traditional areas in which paralegal roles and responsibilities can be expanded;
- (b) revise the ABA's Model Rules of Professional Responsibility to allow for expanded roles and responsibilities for paralegals, including:

- (i) revision to the references concerning ultimate responsibility and accountability of a lawyer for paralegal's work rather than "under direction supervision";
 - (ii) revision to references concerning nonlawyer partnerships with lawyers, fee sharing arrangement with nonlawyers, etc.;
- (c) provide a model for revisions to court rules which would permit expanded roles and responsibilities for paralegals;
- (d) provide a model for expanded rules of practice in state administrative agencies for representation by paralegals and other qualified nonlawyers.

In keeping with its mission, NFPA would be honored to provide and sponsor a delegate to this newly created commission. Let us begin by working as partners in the reformation of the legal system. The public demands changes in the methods by which legal services are delivered. Each profession brings a unique perspective; but, all have a common goal - to change the system to meet the needs of the public. Let us pledge to assemble the allied legal professions involved to develop a new framework within which to provide legal services as well as an effective method for nonlawyer involvement in the delivery of low-cost, effective and efficient legal services to the public. Together, we can work together to protect the integrity of the legal system and serve the public's interest.

Respectfully Submitted,

NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.

/s/ Mary M. Thomas, President