

## STATUS OF LAWS AFFECTING PARALEGALS IN CALIFORNIA

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(Formerly Sacramento Association of Legal Assistants) - March 2002

During the year 2000 legislative session, the California Alliance of Paralegal Associations (CAPA) promulgated legislation in the form of Assembly Bill (A.B.) 1761 that was designed to provide a definition for the term “paralegal.” This legislation was considered to be a “dream bill” because it was strongly promoted as a consumer protection measure. The idea behind the bill was that if traditional paralegals, or those who work under attorney direction, were somehow differentiated from independent paralegals, the public would be protected from con artists and other disreputable individuals who prey upon unsuspecting persons seeking alternatives to attorney-provided legal services.

In California, earlier legislation had set forth requirements for paralegals who directly serve the public. Among other stipulations, these laws said that such paralegals could no longer call themselves “paralegals,” but, instead, must be named “legal document assistants (LDAs).” Additional directives required the posting of bonds in each county where the LDA might work and set serious penalties if the LDA crossed over the line into the unauthorized practice of law.

Because of its consumer protection tag, A.B. 1761 sailed through the legislative process and was signed into law as Sections 6450, et seq., of the California State Business and Professions Code. However, during the process the legislation took on some ominous aspects. Paralegals violating the laws could face stiff fines and/or jail time. Duties that paralegals could perform were narrowly defined. All continuing education for paralegals was to be provided either by the state bar or by state bar-approved providers. In case of a legal dispute with a paralegal, attorney fees are only awarded to prevailing plaintiff, which means that if a paralegal is wrongly accused and prevails in court, the paralegal is out of luck. On the up side, the laws do set forth minimum educational standards to be a paralegal, and paralegals are required to maintain extensive educational and continuing education records. Ironically, though, suspended or disbarred attorneys were left out of the mix and can easily work as paralegals in California—no harm no foul.

Business and Professions Code sections 6450, et seq., went into effect as of January 1, 2001, and hadn't been on the books for more than six weeks when A.B. 1083 was introduced by a Sacramento law firm. The law firm was worried that if employees other than paralegals performed the tasks set forth as paralegal duties by the new laws, the firm might be at risk for malpractice claims. Originally, A.B. 1083 set out to exclude all possible job titles such as clerk, legislative assistant, law librarian, etc. When local paralegals pointed out that it would be impossible to list every job permutation that could conceivably perform paralegal work, the bill was changed to include the following language: “Paralegal means a person who holds him or herself out to be a paralegal, who is qualified by education, training, or work experience . . . .” Additionally, paralegal duties were made discretionary by adding the word “may” into the bill language.

CAPA, the sponsor of the parent legislation, was silent as to the changes in the paralegal laws made by A.B. 1083, but other California paralegals took advantage of the opportunity to try and fix the many problems associated with the laws. Unfortunately, this effort failed, and only the definition and duties portion of the laws were amended by A.B. 1083.

With encouragement from the legislative coordinator in Assembly Member Patricia Bates's office (Ms. Bates was the sponsor of A.B. 1083), the California Paralegal Legislative Advocacy Alliance (CPLAA) drafted amending language to Business and Professions Code sections 6450, et seq. Through the efforts of Eryka Fraczek, the amendment package was circulated among legislators to find an author.

Assembly Member Joseph Canciamilla agreed to sponsor the clean-up legislation, and A.B. 2756 was introduced on February 25, 2002. CPLAA's amendments seek to bring the paralegal definition in line with the American Bar Association's definition, to allow the mandatory continuing education requirements to be approved by the national Federation of Paralegal Associations (NFPA) and the National Association of Legal Assistants (NALA), as well as by the state bar, and to allow California's paralegals to perform legal services that are already allowed by other California statutes and by administrative and/or court authority. The clean-up legislation does not alter the intent of the parent legislation but is being vigorously opposed by CAPA.

As they presently stand Business and Professions Code Sections 6450, et seq., are considered by most thoughtful persons in the legal community to be completely unworkable. The laws are quasi regulation. There is no method of enforcement except by lawsuit, where even if the paralegal prevails in court, no attorney fees are possible. The California State Bar feels the laws are unwieldy as the Bar has no mandate to provide continuing education for paralegals, even though this provision is written into the law. Basically the continuing education situation is a "Catch 22"; paralegals are required by law to take state bar courses, but the bar makes no provision to accommodate paralegals. Ironically, CAPA's annual June conference, which offers a day's worth of continuing education for paralegals doesn't meet the law's requirements as CAPA is not a state bar-approved provider.

Because CAPA has done little, if anything, to educate the state's paralegals and attorneys as to the mechanics of compliance, the laws are a very well-kept secret. Plus, not all of the state's paralegals belong to CAPA. Consumers receive no more protection under these new laws as the ability to prosecute for the unauthorized practice of law was already clearly established in California law<sup>1</sup>. For many, the biggest worry is that Business and Professions Code sections 6450, et seq., will become "boilerplate" language in malpractice actions against attorneys. Since there is no uniform method to track compliance, who is to say whether an attorney's paralegal meets the letter of the law.

The existing California laws are anti paralegal; they not only freeze the paralegal role, they also take the profession several steps backward. The clean-up legislation proposed by the California Paralegal Legislative Advocacy Alliance will allow the state's paralegals to continue to work in the same capacities that we always have—dedicated professionals capable of thinking for ourselves and serving as valuable members of the legal services team.

Due to CAPA's opposition, CPLAA has its work cut out. It is shaping up to be a major legislative struggle. California's present paralegal laws are not model laws—they provide no consumer protection; they open up paralegals and their attorney supervisors to malpractice liability; and meeting compliance is practically impossible. It is in the best interest of the nation's paralegals that CPLAA succeeds in its legislative efforts.

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<sup>1</sup>The landmark case discussing the unauthorized practice of law in California is *People of the State of California v. Landlords Professional Services* (1989) 215 Cal.App.3d 1599, 264 Cal.Rptr. 570. This case of first impression set about to define the practice of law in California.