

June 5, 2000

Senate Judiciary Committee
California State Senate
State Capitol
Sacramento, California 95814

Re: **Assembly Bill 1761**

Ladies and Gentlemen:

The San Francisco Paralegal Association has followed the progress of AB 1761 since the Association learned of the bill after it was introduced in the Assembly. We were taken by surprise to learn of the proposed legislation and had little time to digest the bill since we were not informed of its creation. We do acknowledge the intent of the bill as one to support the enforcement of statutes governing nonlawyer legal services under Business and Professions Code §6400, et seq., and, therefore, to define the term "paralegal". We have no objection to such an intent.

We believe that the bill is in serious need of further amendment. It currently oversimplifies the function and scope of the paralegal profession, it introduces a form of regulation that cannot readily be enforced and it disregards relevant issues which must be addressed prior to any enactment of such legislation.

Definition of "Paralegal"

The bill as currently written contains a definition of a paralegal that states that paralegals work under the supervision of an attorney, which is not the case in actual practice. The State Bar of California rejected this definition of a paralegal two years ago and conformed its definition to the American Bar Association's definition that a paralegal performs work "for which an attorney is ultimately responsible".

Legislative enactment of the professional definition of the term "paralegal" as provided under AB 1761 would not only limit the volume of paralegal services utilized by attorneys or subject the legislation to token compliance by attorneys, it would also fly in the face of state and federal statutes that have been in force for a number of years. We recommend that §6450(a) be amended as follows:

"Paralegal" means 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."

Alternatively, if the American Bar Association's definition is preferred, §6450(a) should be amended as follows:

"A legal assistant or paralegal is a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which ia lawyer is responsible."

Providing Legal Services Under Statutory Authorities

The proposed language in §6451 is misleading and confusing in the face of other statutory authorities and appears to be poorly reasoned. It states that *"Nothing in this section shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specically allowed by statute, case law or court rule."* First, this language is not necessary since paralegals working under attorneys do not require additional authority to provide legal services to consumers under this section. Second, nonlawyers who do not work under attorneys or who are not employed by governmental agencies are authorized under both state and federal law to provide legal services to consumers as specified by such statutes. The present language would prohibit paralegal functions already authorized by statute.

In California, Labor Code §§5501 and 5700 authorize representation by nonlawyers before the Workers Compensation Appeals Board. Similarly, California Unemployment Code §1957 authorizes nonlawyers to appear before the Appeals Board on behalf of consumers. Similar statutes governing nonlawyer representation are presently in force in Illinois, Indiana, Alaska, Maryland, Michigan, Minnesota, New York, Ohio, Washington, and Wisconsin.

Federal agencies which permit nonlawyer representation include:

- Board of Immigration Appeals
- Bureau of Indian Affairs
(Financial Assistance and Services Program)
- Civil Aeronautics Board
- Comptroller of Currency
- Consumer Product Safety Commission
- Department of Agriculture
- Department of Commerce
- Department of Health and Human Services
- Department of Justice
- Department of Labor

- Department of Transportation
- Department of Veteran's Affairs
- Federal Deposit Insurance Corporation
- Federal Energy Regulatory Commission
- Federal Maritime Administration
- Federal Mine Safety and Health Review Commission
- General Accounting Office
- Internal Revenue Service
- Interstate Commerce Commission.

The proposed bill does not make sufficient allowances for nonlawyer representation as authorized by statute to an extent sufficient to protect nonlawyers acting under statute from continuing to serve the public without undue obstruction resulting from the bill's glaring omissions. Additionally, no allowances Senate Judiciary Committee are made for independent agents working as nonlawyers under statute. As a result of these omissions, the bill is inconsistent with state and federal law.

Statutory authority for nonlawyer representation is minimally acknowledged in the proposed legislation as a peripheral function within the paralegal community. In fact, statutory authority governing paralegal services has been rooted in the profession for years and has served as a basis for the expansion of affordable legal services where none would otherwise be available. From the present language of the bill, it is clear that a true lack of comprehensive understanding exists of how paralegals function within the legal community. To correct these deficiencies we recommend that §6451 be amended as follows:

"A paralegal includes a nonlawyer who provides substantive legal services directly to members of the public when authorized by administrative, statutory or court authority to do so."

Monitoring System

Other measures contained in the bill bring similar concern. For example, §6450(d) states: *All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. All continuing legal education courses shall meet the requirements of Section 6070.* Business and Professions §6070 applies exclusively to members of the State Bar of California, who are issued a State Bar number at the time they are licensed and monitored thereafter by their State Bar numbers. Paralegals are not licensed. There is no registration program in place to monitor them, either through the paralegal education system or through an employment registrar. No provision exists to modify §6070 so that it may apply to paralegals.

Before any form of monitoring system for paralegals can be established, a serious examination of the structure to be developed must be completed and approved,

including cost analyses and time tables. Certainly, the fiscal impact of the proposed legislation would not conform to the fiscal impact assessment accompanying the bill if §6450(d) is to be actively enforced.

Paralegal Requirements

Another area of concern is §6450(3), which states paralegal requirements as follows:

"A baccalureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an active member of the State Bar of California, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks."

No guidelines are provided to determine a common standard for "qualified to perform paralegal tasks". We suggest that §6450(3) be amended as follows:

"A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience for which an active member of the State Bar of California is responsible, and a written declaration from this attorney setting forth specific, substantial legal tasks the person has performed."

Legal Services to Consumers

The language of §6452 takes an oversimplified view of self-employed paralegals. It offers no protection to individuals who are self-employed and offer paralegal services both to attorneys and to consumers. The inference is made that paralegals either work as traditional employees or as self-employed legal document assistants. Self-employed paralegal service providers in general are omitted and should be addressed here. This section should be amended to concisely set forth any separate advertising or identification requirements for each market a self-employed paralegal may serve.

Punitive Measures

Although the language contained in §6454(b) has been modified to alleviate disproportionate punitive measures for violations of the proposed legislation, it still falls short of protecting individuals from unrelated third-party abuse of this section.

As it is presently worded, a violation does not necessarily result from a consumer's complaint or injury, though it is remotely implied. Nothing in this section as presently stated would prevent an unrelated third party from reporting to a local district attorney the names of all paralegals listed under the Yellow Pages as subjects for investigation, thereby subjecting those individuals to legal confrontations and to supporting their own defense when no injuries to consumers were incurred. This section should be amended

to concisely set forth the act or acts constituting a violation to prevent unrelated third party abuses and to avoid enforcement of victimless crimes.

The hypothetical example above is not far removed from fact. On July 29, 1997, a complaint for injunctive relief, restitution, disgorgement, statutory penalties, attorney fees and costs was filed against numerous independent paralegal service providers found in the Yellow Pages under Davis v. Woolrigde, et al., San Bernadino County Superor Court Case No. RCV 29284. Plaintiff, an attorney, filed his complaint "in the public interest". His complaint claimed violation of the Unfair Practices Act (unfair competition) and false advertising (no disclaimer) on the basis of Yellow Pages advertising alone.

Conclusion

These are but a few of the numerous portions of the bill that our Association views as weak and confusing. In order for the present bill to serve as viable legislation that can effectively be enforced and will function in accordance with its alleged intent, it needs considerable revision.

We enclose herewith a copy of our earlier correspondence to Assemblywoman Brewer, which sets forth in precise language numerous amendments to the bill. We resubmit those amendments now as we find them still applicable. A videotape entitled "Paralegals: Enhancing Practice, Professionalism and Profit" will be forthcoming under separate cover.

The San Francisco Paralegal Association would prefer to see the bill scrapped entirely and reintroduced from a comprehensive perspective that incorporates the paralegal profession as a whole. We wholeheartedly offer our conscientious participation in the creation of better legislation that would serve the paralegal community and the public at large.

Sincerely,

SAN FRANCISCO PARALEGAL
ASSOCIATION

ERYKA M. FRACZEK
Legislative Representative

SAN FRANCISCO PARALEGAL
ASSOCIATION

BONNIE MEDINA-JAWAD
President

/emf
Enclosure

cc: Senator Jackie Speier