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Public Affairs Office
Hawaii State Judiciary
417 South King Street
Honolulu, Hawaii 96813

*Re: Proposal Amending Rule 5.3
of Hawaii Rules of Professional Conduct*

Gentlemen:

Thank you for extending to the National Federation of Paralegal Associations (NFPA) the opportunity to comment on your proposed amendment to Rule 5.3 of the Hawaii Rules of Professional Conduct. We hope that the information we provide will be of assistance to you in creating a regulatory policy that will meet the goals of improving access to justice for the citizens of Hawaii, engender public trust in the legal profession, expand the role of the paralegal and help attorneys maintain a profitable law practice.

NFPA has been the national voice for the paralegal profession for over 27 years. We are a grass roots organization consisting of 57 member associations with 17,000 members nationwide. We are unique in that our members create the policies we proffer in response to various regulatory actions affecting the paralegal profession. NFPA's local association in your state is the Hawaii Association of Paralegals.

Our federation is a strong proponent of regulation for the paralegal profession. While licensure is our preferred form of regulation, NFPA may support other forms of regulation that would increase the role of the paralegal on the legal service team.

Paralegals are an integral part of the legal services team and hold a position on that as an addition to and not instead of associate attorneys. This concept is an important one in that many young attorneys feel that paralegals may usurp their position in the law firm.

It is true that access to justice is of overriding concern to the legal profession today. Protecting the public from harm and maintaining the public's trust are major components in creating more access to justice for the growing number of lower and middle class income people who would not otherwise easily afford high quality legal services. Your commission is to be commended for recognizing this need and for attempting to address it with the utilization of paralegals as an additional level of service providers.

Your proposal has taken the important first step toward regulating the profession and we offer the following comments on your proposal:

Until recently, the words "paralegal" and "legal assistant" were used interchangeably and the tasks performed by persons using these titles was identical. In the last few years, the title "legal assistant" has been used to denote those persons performing mainly clerical tasks while the "paralegal" performed those substantive legal tasks that absent the employment of a paralegal, the attorney would perform. In addition to "legal assistant" the terms "lawyer's assistant" and "paralegal assistant" are employed by former legal secretaries seeking a title other than "secretary".

In light of the foregoing and in keeping with the responsibility of never misleading the Court or the public, NFPA suggests that only the term paralegal be used in your regulation process.

It is imperative that your proposal contain a definition of a "paralegal". NFPA offers its definition as follows: A paralegal/legal assistant is 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.

We would also recommend, as did the HSBA Task Force in its proposal, that this rule is not intended to cover other nonlawyer personnel working under attorney supervision who are not performing in the capacity of a paralegal. To allow otherwise would weaken the intent of the amendment.

Enclosed for your review NFPA's publication "Paralegal Responsibilities" which delineates the many tasks paralegals are currently performing in various practice areas. Perhaps this publication could be made a necessary component of your regulatory process and would assist both attorneys and the public in realizing the many substantive legal tasks that may properly be assigned to paralegals.

Your paragraph "(e)(1)(i)" should be modified to delete the words "and the client" to the end of that sentence. While counsel should always introduce the legal services team to the client, the client's approval to the team should not be required.

In section "(e)(1)(vii)" should allow paralegals to represent a client in a court or administrative proceeding where allowed by statute, administrative rule or regulation, court order or other legal authority. This would assist in creating greater access to justice.

NFPA delegates have always taken a visionary approach to creating policy and have mandated that any regulation of our profession should aspire to meeting more than "minimum criteria" and have adopted the standard of advanced competency to measure those persons who may properly work as paralegals. In keeping with that visionary approach, NFPA delegates promulgated the Model Code for Licensure and the Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement which we include with this submission. The purpose of the models was to deliver them to states considering regulation in the hopes that they would find it acceptable, with some modifications, for use in their state.

This standard would allow attorneys to work on the more detailed strategies of a legal matter while secure in the knowledge paralegals who demonstrate these advanced competencies are working on the other substantive legal tasks that comprise a legal matter.

With respect to the certification itself, we suggest the following:

1. (a)(1) should also include the successful completion of the Paralegal Advanced Competency Exam (PACE) as offered by NFPA. The RP and CLA credentials are the two nationally recognized examinations for paralegals today and the successful candidate would certainly meet the criteria for regulation in any state. Hawaii is home to at least 9 PACE Registered Paralegals. A copy of our PACE brochure is enclosed.
2. NFPA recognizes that any policy seeking to regulate our profession must balance the need to include all those persons currently working as paralegals with creating a high standard for future entrants of the profession. While the requirements in subparagraphs "4" through "7" are necessary to accomplish the inclusion of those presently employed as paralegals, each should now be utilized only as a grandparenting period have a definite sunset date.
3. While recognizing that CLE is not yet mandatory in Hawaii, it should be noted that if public protection and increased access to justice is one of the goals to be met in this proposal, continuing legal education will serve to educate the public and attorneys about the high standards paralegals have chosen to maintain. In fact, paralegals possessing the RP designation are required to attend a minimum of 12 hours CLE every two years to maintain their designation and at least one hour of CLE must be in ethics. NFPA would suggest adopting this standard for your proposal.
4. Paragraph "4" of your proposal should be deleted. Disbarred or suspended attorneys should not be allowed to work as paralegals under any regulatory process adopted by

your state. This would severely undermine the paralegal profession and would not serve to protect the public.

Additional information regarding NFPA and the paralegal profession may be gained from visiting our web site at <http://www.paralegals.org/> and we invite you to visit that site to learn more about us.

Thank you, again, for recognizing the integral roles paralegals play on the legal services team. We hope that our comments and suggestions will help the Court address its intention of regulating the profession. Should you require any additional information or wish to speak to someone about these matters, please contact either me or Mary Kay Rivera, RP, our present Vice President and Director of Positions and Issues. Ms. Rivera can be reached at the offices of Richard A. Glickel, Esq., Two Crosfield Avenue, Suite 103, West Nyack, NY 10994; her telephone number at work is (845) 353-4300 and you may email her at VPPI@paralegals.org. Hawaii is part of NFPA's Region I and our Region I Director, Lee Davis, may be reached at LeeDav@aol.com

Again, thank you for allowing NFPA to provide this information to you.

Very truly yours,

Sally Andress, RP
President, NFPA

cc: Hawaii Association of Paralegals
Board of Directors, NFPA