

**COMMENTS OF THE
NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.
REGARDING THE REPORT OF
THE SUPREME COURT OF NEW JERSEY
STANDING COMMITTEE ON PARALEGAL EDUCATION AND
REGULATION**

INTRODUCTION

NFPA has followed and extensively participated in the activities surrounding paralegal practice in New Jersey for almost two decades. During that time, great strides for the paralegal profession have been made. NFPA has continued to monitor New Jersey's progress with interest, submitting comments and providing testimony when appropriate. We have been involved in major decisions and studies within the State that are specifically relevant to Report of the Supreme Court of New Jersey Standing Committee on Paralegal Education and Regulation (the "Report") as follows:

- Offering written and verbal testimony to the UPL Committee during its consideration of original Opinion 24 (1990);
- Offering written testimony on the appeal from Opinion 24 (1991);
- Offering information and resources to the Committee on Paralegal Education and Regulation (the "Committee") when it was established in 1993; and,
- Supplying ongoing information and documentation to the Committee through an NFPA member serving on the Committee.

By way of background, NFPA is a non-profit professional organization comprising state and local paralegal associations throughout the United States and Canada. Founded in 1974, NFPA is a federation of 54 member associations comprising over 17,000 individual members. For more information regarding NFPA, its history and positions on various issues, see [Exhibit "A."](#) NFPA has been the national voice for the paralegal profession for 25 years.

NFPA is joined in these comments by its member associations located in Connecticut, Delaware, Massachusetts, New York and Pennsylvania, including the Connecticut Association of Paralegals, Delaware Paralegal Association, Massachusetts Paralegal Association, New Haven County Association of Paralegals, Pittsburgh Paralegal Association and Western New York Paralegal Association. It is NFPA's understanding that the South Jersey Paralegal Association ("SJPA"), NFPA's member association located in New Jersey, will be filing separate comments.

NFPA commends the Committee on Paralegal Education and Regulation (the "Committee") for the amount of time and effort it has spent in reviewing the issues surrounding the paralegal profession and developing a formal Report concerning its findings. Because of the cooperation and coordination between the Court, Bar Association and paralegals within the state of New Jersey, the State has accomplished

what none has done before: created a thorough study of the paralegal profession and recommended a plan to further recognize and enhance the profession.

NFPA commends the Court for its foresight in conducting an extensive review of the paralegal profession and including various professionals on the Committee. The input from paralegals, lawyers, judges, educators and members of the public has clearly made the Report comprehensive in its scope and magnitude. NFPA also commends the New Jersey State Bar Association for its request that resulted in the appointment of and charge to this Committee. The intrinsic value of soliciting and obtaining information from paralegals, paralegal educators, and professional organizations was clearly recognized by both the Court and Bar. The work of the Committee reflects the commitment within the State to ensure a comprehensive investigation concerning the potential regulation of New Jersey paralegals.

NFPA generally supports the concept of regulating the paralegal profession through a licensing program that would permit paralegals to perform more tasks than they currently perform. NFPA has specific comments regarding the various recommendations contained in the Report. For ease in reference, NFPA's comments have been organized to refer to the specific Recommendations.

COMMENTS ON SPECIFIC RECOMMENDATIONS

Recommendation 1 - Paralegals in New Jersey should function under the governance and direction of the Supreme Court.

NFPA is aware that, when discipline of members of the legal profession is involved, 49 of 50 states' constitutions give that authority to the respective state court. NFPA believes that the Committee should closely consider who would be governed by the proposed regulatory plan and specifically address whom the regulation is intended to govern.

Based on the contents of the Report, it is assumed that any paralegal employed within the borders of New Jersey will be subject to these rules. However, it has been the unofficial feedback of many paralegals in Pennsylvania, Delaware and New York that their employers may not deem them subject to these rules. It is NFPA's understanding that any paralegal working with an attorney who is handling a legal matter within the borders of New Jersey would be subject to the regulation. Many paralegals working in contiguous states regularly cross your state's bridges to assist in various legal matters. If NFPA's understanding is correct, this Report may have more far-reaching consequences than may have been initially intended.

Here are two examples of the questions that arise. If a paralegal employed in a Philadelphia-based office by an attorney licensed to practice in the state of New Jersey (or admitted *pro hac vice* in New Jersey) is handling a case venued in the Superior Court of New Jersey, would that paralegal be subject to the regulatory plan? If a paralegal employed or retained by a California-based firm is merely requesting

documentation from a New Jersey court or performing some other paralegal task, does that paralegal become subject to the New Jersey regulation?

We believe that it is important for the Committee to clarify whether paralegals employed or retained outside New Jersey, but travelling into the state to provide services, would be subject to the proposed regulatory plan. NFPA requests this clarification not only to aid in the understanding of the regulatory program for our members, but also to avoid what could present a myriad of potential problems in the initial phases of administering the regulation. Since New Jersey is the first state to undertake such a comprehensive regulatory program, it is likely that other states may follow in its footsteps. Providing this clarification may circumvent problems and result in the creation of reciprocity clauses nationwide.

* * * * *

Recommendation 2 - The Supreme Court, pursuant to its constitutional authority over the practice of law, should establish a regulatory scheme to govern the practice of paralegals.

NFPA is acutely aware that this, the first formal regulatory program proposed for all paralegals within a state's jurisdiction, will have a large impact upon paralegals and paralegal participation in the delivery of legal services in New Jersey and throughout the United States. Over the past 25 years, NFPA has reviewed, been involved with and/or commented upon proposed regulatory programs developed by at least 15 different states. Although many states have developed regulatory proposals, they stopped short of formal approval and implementation.

New Jersey, and specifically the Committee, should be aware of the ramifications of its actions to establish a regulatory program for paralegals as well as the impact that implementation of the program will have on paralegals across the country. Many states have waited for one to begin. With that beginning comes an awesome responsibility. New Jersey is forging a path that many states may follow.

NFPA respectfully requests that, when reviewing these comments, the Committee and Court consider the responsibilities involved in being the first state to implement paralegal regulation. While we understand that the needs of the State must be paramount in all considerations, the decisions made and the final path delineated will reach out to all consumers and all paralegals, both in New Jersey and across the country.

* * * * *

Recommendation 3 - Persons who seek to be practicing paralegals in New Jersey should be required to demonstrate compliance with minimum hour and course content requirements of paralegal programs offered by American Bar Association-approved paralegal programs.

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 educational opportunities for paralegals have increased significantly since the profession's inception. Based on NFPA's studies, we must respectfully disagree with some of the minimum requirements set forth in the Committee's Report.

Today there is 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 community 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 that offer masters degrees in paralegal studies.

In the 1970's the American Bar Association ("ABA"), through its Standing Committee on Legal Assistants ("SCOLA"), had the foresight to recognize the potential for growth in educational opportunities for the paralegal profession and established a voluntary approval process for training programs. Guidelines and Procedures for Obtaining ABA Approval of Legal Assistant Education Programs ("ABA Guidelines") were created along with an Approval Commission, working under the auspices of the SCOLA, to ensure compliance with the ABA Guidelines. The approval process, albeit voluntary, does provide prospective employers with assurance that the educational institution has, at least, met minimum standards. SCOLA encourages programs to exceed those standards and many do, since they require more than 18 hours of legal specialty courses.

The time has long since passed when a paralegal could enter the profession without formal education. Currently many employers prefer paralegal candidates with the following background: (1) a bachelor degree from a four-year institution; (2) paralegal training, preferable from an ABA approved paralegal program; and (3) hands-on practical and work related training such as that obtained through an internship or externship⁽¹⁾.

NFPA has a rich history of supporting quality education for paralegals. NFPA recognizes that a two-year degree with an emphasis in paralegal studies is acceptable to employers in some markets as the minimum criterion for individuals to enter the paralegal profession. Such a market may exist in New Jersey or in only parts of New Jersey. However, current trends across the country indicate that formal paralegal education is becoming a requirement to secure paralegal employment. Consequently, NFPA recommends that future practitioners should have a four-year degree to enter the profession. Individuals receiving a formal paralegal education should have 24 semester hours or the equivalent of legal specialty courses to enhance their ability to practice as paralegals.

NFPA is committed to ensuring that paralegals *nationwide* are prepared for the future - in their education, careers and opportunities. NFPA submits that paralegal job mobility

should not be restricted by one locality's regulatory program any more than that of an attorney. To promote a minimum standard that is not consistent with national hiring trends in today's market is most metropolitan cities across the United States may be a disservice to the very paralegals whose opportunities and credibility this Report seeks to secure. Certainly, it is a disservice to the clients of the legal industry. They should receive no less qualified a paralegal in New Jersey than in any other state.

It is NFPA's intent to provide the necessary foundation from which paralegals may expand their roles in the future. 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 their future role in the delivery of legal services. NFPA is firmly committed to the idea of standardizing paralegal education while allowing sufficient latitude for local creativity and innovation in the curriculum. NFPA will continue to pursue this goal through the work of its Education Committee. Currently, the Committee has prepared a listing of recommended courses, attached hereto as [Exhibit "B."](#)

* * * * *

Recommendation 4 - The within rules for licensing the practice of paralegals in New Jersey should be adopted by the Supreme Court.

NFPA has long held the position that it can support a regulatory program that allows for the paralegal role to be expanded and/or enhanced. However, NFPA respectfully disagrees with some of the Committee's findings relating to the creation of a licensing plan. While the current proposal does not specifically address expanding current paralegal roles, NFPA believes that, over time, the impact of the program may lead to greater opportunities for paralegals in New Jersey. It is in this spirit that NFPA respectfully requests consideration of the following specific comments.

In reviewing the proposed plan for licensing, NFPA has identified several issues arising from the Committee's Report. Due to the length and detail of this section, as well as the number of specific comments NFPA has in connection with this Recommendation and related information, NFPA will number its comments for ease in reference.

(1) *Mandatory or voluntary licensing plan.* NFPA understands that it was the goal of the Committee to create a system that would provide minimum standards for paralegal education and practice. Although the Committee promulgates "Rules for Licensure of Paralegals," ("Rules") there is no indication in the report that the plan is truly a licensing program. Licensing is a **mandatory** form of regulation. By definition, licensure is the process by which an agency or branch of government grants permission to persons meeting predetermined qualifications to engage in a given occupation and/or to use a particular title. It is unclear whether it is the Committee's intention to implement a program where individuals could not practice as or call themselves paralegals unless they met the predetermined qualifications identified through the licensing plan. Licensing is a restrictive form of regulation to control those entering a profession. NFPA

respectfully suggests that if the Committee's intent is a true licensing plan, it should also recommend that the program be mandatory in order to create a fair and equitable means to regulate the profession.

(2) Three tier licensing program. The Committee has recommended three licensing levels: (1) "plenary" for traditional paralegals; (2) "restricted" for in-house trained paralegals; and (3) "general" for contract paralegals. As stated in comments to Recommendation 3, NFPA does not believe that in-house training alone is a viable career option for paralegals in today's marketplace, nor are the provisions contained within the proposed plan easily enforceable. NFPA recognizes that some employers may wish to continue in-house training for individuals proceeding to law school. These individuals already function as law clerks and operate within a different scope of duties and standards. While NFPA recognizes that some paralegals later attend law school, we submit that the paralegal profession is not a stepping stone to law school. If the individual chooses to work as a paralegal during their law school education, they should first meet the necessary qualifications to obtain a license. Without such a caveat, the paralegal profession becomes a subservient profession. NFPA does not believe that this is what the Court intended by its charge nor that the charge should be expanded to serve as a vehicle for other persons under its jurisdiction. Accordingly, NFPA recommends that "restricted" licensure be deleted from the regulatory plan.

NFPA believes that a licensing plan should uniformly qualify all paralegals, regardless of whether they are employed within a law office, or are retained by attorneys on a contract basis. Accordingly, for ease in creating and controlling a mandatory licensing program, NFPA created a Model Act for Licensure ("Model Act"), attached as [Exhibit "C."](#) The Model Act contains all of the necessary provisions for a two-tiered licensing program for general practice (tier 1) and specialty practice (tier 2). NFPA created the Model Act with the same intent as for the Model Code: for review, revision and implementation by specific states to meet jurisdictional needs.

(3) Grandparenting provisions. The Committee stated that the "educational value of work experience and life experience must also be taken into account. Dismissing this factor with respect to a field in which persons have been functioning de facto for some time would be to ignore reality."⁽²⁾ NFPA members have recognized for years that a grandparenting provision must be a component of any comprehensive regulatory program. NFPA agrees with the Committee that a grandparenting provision permitting those who have been practicing as paralegals to waive all educational requirements is necessary, but that the length of time for practice be increased from two years to three years. (See [Exhibit "C"](#) for specific grandparenting provisions contained within NFPA's Model Act.) NFPA believes that the grandparenting provision should begin tolling on the date the regulatory plan is implemented.

(4) Paralegal definition. NFPA is comprised primarily of paralegals that work with the supervision of or accountability to attorneys.⁽³⁾ These individuals may be employed on a full-time or part-time basis or may be retained⁽⁴⁾ by an attorney on a case-by-case basis pursuant to contract. A small percentage of NFPA's membership works outside the

supervision of attorneys. However, these paralegals work only pursuant to statute, administrative regulation or court rules and are engaged in legal permissible activities. *E.g.*, regulations that permit non-lawyer representation in federal administrative agencies.⁽⁵⁾ Some paralegals perform procedural work that requires knowledge of procedural concepts; however, these individuals are also engaged in only legally permissible activities since they are not rendering legal advice.

The definition suggested in the proposed Rules, section I.A. may exclude these latter-described paralegals. Accordingly, NFPA proposes the following clarification for your consideration:

...in a capacity or function which involves the performance, under the direction and supervision of a lawyer (hereinafter "supervising lawyer") OR WHERE OTHERWISE AUTHORIZED BY ADMINISTRATIVE, STATUTORY OR COURT AUTHORITY, of specifically delegated substantive legal work...

NFPA would support a definition of paralegals as clarified above. Further, we believe that it is in the best interests of the legal profession, the paralegal profession and community to have such a statutory definition of paralegals to avoid any misinterpretation of what constitutes permissible activities.

(5) Educational criteria for licensure. NFPA has been intricately involved in promoting and developing standards for quality paralegal education with allied legal organizations such as the ABA and the American Association for Paralegal Education since it was formed in 1974. NFPA's position on education has been provided in comments to Recommendation 3.

NFPA recognizes that the purpose for which the Committee imposes the ABA approval standard is that the Court's jurisdiction extends only to practitioners and not to educators or educational institutions. Because ABA is the only entity that currently scrutinizes paralegal training programs, NFPA recognizes the purpose for which the Committee imposes the ABA-approval standard. Additionally, based upon NFPA's understanding of the costs involved in establishing an accrediting/approval process for educational institutions, it understands why the Committee would not want to undertake such a process itself.

However, the Committee should be aware that the ABA approval process is designed to be a voluntary process. There are many factors that enter into an educational institution's decision to seek or not seek ABA approval. Given the state of funding for higher education, the decision may sometimes be solely based on the educational institution's financial situation. That does not mean, however, that graduates from those programs that do not seek ABA-approval are not quality practitioners. The Committee's current regulatory requirements penalize those graduates.

The Committee should be aware that there are over 800 educational programs throughout the United States and only 226 have obtained ABA approval. NFPA is concerned that, through its Rules as currently proposed, the Committee will: (1) remove the voluntary aspect of the approval process; (2) place an undue financial burden on educational programs; and (3) penalize quality paralegals merely because they didn't graduate from an ABA-approved program. NFPA respectfully submits that while graduation from an ABA-approved program is helpful, it is but one measure and one means to enter to the profession.

NFPA would also caution the Committee that application for ABA approval does not mean that approval will ultimately be granted. The requirements contained in the Rules for Licensure of Paralegals may place an additional administrative burden upon the ABA's SCOLA staff. *NFPA believes that it is imperative that the Committee solicit specific input from the ABA concerning this requirement in order to determine whether implementation is feasible.*

In the absence of and/or in addition to establishing additional acceptable educational criteria, NFPA suggests that the Committee consider the regular publication of a list of paralegal schools that are ABA approved or refer potential students to the ABA publication that contains information about a school's status. In the absence of legislation requiring mandatory disclosure of this information by schools to students, NFPA believes that it is imperative to provide a tool through which students and prospective students can decide which program to attend in order to meet the predetermined requirements of the regulatory plan.

NFPA believes that it is significant to point out that educational opportunities for paralegals in New Jersey have improved considerably as a result of activities by its member association, the South Jersey Paralegal Association ("SJPA"). It should be noted that SJPA members recognized that the activities of the Court would ultimately lead to regulation incorporating an educational component. As early as the mid-1980s, SJPA members developed and regularly publish the results of a comprehensive and fair survey of educational opportunities for prospective students and paralegal employers. As a result, NFPA believes that a majority of educational institutions in New Jersey already meet the requirements set forth in the Committee's Report. NFPA applauds SJPA for its foresight and actions that resulted in improvements to as well as consistency in most educational opportunities for paralegals. NFPA also commends SJPA for taking the necessary steps to meet an envisioned regulatory plan.

NFPA disagrees with the minority opinion stated in the comment section for plenary licensure concerning the heightened requirement for applicants who have completed their education outside New Jersey. NFPA believes that It makes no difference where the education is obtained, as long as it meets the minimum standards identified by the Committee, *e.g.*, through an ABA approved program. Some continuing education classes may be necessary. However, since the regulatory plan indicates that paralegals will be working with attorney supervision, it should not be assumed they do not meet the requirements merely because their education was not obtained in New Jersey.

(6) *General provisions for contract paralegals.* NFPA supports the prohibition on contract paralegals whose only training has been in-house and who do not otherwise qualify for a plenary license. However, NFPA questions the Committee's research results that would justify a higher standard for contract paralegals. It is NFPA's understanding that these individuals still work with attorney supervision. Why must they meet a higher experiential level? This section is not for the purpose of "interim criteria" nor does it waive the education for the higher standard. Is the standard to supervise lessened for the attorney when retaining rather than employing? The Supreme Court, in its modification of In re Opinion 24 of the UPL Committee, has already deemed a contract paralegal accomplishes the same tasks as a paralegal employed in a law firm, corporation or governmental entity. The Court further deemed that contract paralegals require the same level of supervision and responsibility for the work product by an attorney. Consequently, in the absence of an explanation in the comment that might justify this criterion, NFPA is left to conclude that this is an arbitrary requirement placed on the contract paralegal and may serve as an unnecessary barrier to a paralegal's choice in employment status.

(7) *Examination criteria for licensure.* NFPA strongly supports the requirement of an ethics component and development of a proficiency examination as a criterion for paralegal licensure. NFPA has funded the development of the Paralegal Advanced Competency Examination (PACE) which includes ethics components (See [Exhibit "D."](#)) NFPA stands ready to offer the results of its research on examination development and costs in order to assist the Committee and Court with its development of the proposed ethics examination. NFPA has already supplied preliminary information to select members of the Committee. However, to preserve the integrity of PACE as well as protect the proprietary nature of the information, NFPA will respond to this issue under separate cover and request total confidentiality by recipients.

(8) *Continuing Legal Education.* While the Committee mentions continuing legal education ("CLE") in the comment sections of the Report, there is no CLE requirement for paralegals. NFPA understands that CLE is not mandatory for attorneys admitted to the Bar in New Jersey. However, NFPA believes that any regulatory program for paralegals must include a component requiring CLE. NFPA suggests that a CLE component be required under the maintenance of the license provision. NFPA proposes a minimum of three (3) hours per year of a legal or specialty field by a qualified provider of paralegal education (as defined in other sections of the Report) as the prerequisite for license renewal.

(9) *Fee recoverability for paralegal services.* NFPA strongly supports the principle that provides for the recovery of compensation for paralegal services in attorney fee awards and references thereto in several provisions of this Report. New Jersey should take pride in its innovative amendment to R.4:42-9 which was one of the first favorable statutory references to fee recovery for paralegal services in the nation. Many states have taken similar steps recently, just as we anticipate many states will do as a result of this Report.

The Committee may want to amend its Report to include specific information concerning the circumstances under which fees for paralegal services may be included, such as:

- Paralegals employed by attorneys representing clients in contingent fee matters;
- Where applications to the court for fee approval are not required; and
- Defense insurance carrier/client utilizing the services of attorneys who utilize the services of paralegals.

The foregoing are a few examples of the type of information that can be provided. To avoid any misunderstanding or inferred omission in this comprehensive Report, NFPA recommends that the Report specifically state that fees may also be recoverable from clients under other circumstances not necessarily provided for by R.4:42-9. In the alternative, perhaps the Rules of Professional Conduct or the Rules of General Application pertaining to fees/fee agreements might be amended to require attorneys to specifically state the use of and rate for paralegal services to their clients within their fee agreements. In all of these respects, NFPA requests that the references thereto be specific to state recovery of such compensation "at market rates."

It should also be noted that, unless the regulatory program is uniform and mandatory for all paralegals, the Committee's comment that fee recoverability may be dependent upon the licensure of the paralegal⁽⁶⁾ might create misunderstandings that may negatively impact upon the fee statutes currently in existence. NFPA recommends that the Committee further review this aspect of fee recovery before making a final determination.

* * * * *

Recommendation 5 - The within Code of Professional Conduct for paralegals should be adopted by the Supreme Court to be administered by the Committee and others in conjunction with the proposed regulatory scheme.

NFPA shares the goals of the Committee to establish obligations for ethical conduct and procedures for discipline to enforce those ethical obligations for paralegals. NFPA members supported those goals when they created and adopted the NFPA Model Code of Ethics and Professional Responsibility ("Model Code") in May 1993 to delineate the principles for ethics and conduct to which every paralegal should aspire. NFPA members further supported those goals regarding disciplinary procedures for violations of ethical obligations when its members adopted its Model Guidelines for Enforcement to accompany its Model Code in 1997. (See [Exhibit "E"](#).) The Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement expresses NFPA's commitment to increasing the quality and efficiency of legal services and recognizes the profession's responsibilities to the public, the legal community and colleagues.

NFPA submits that exceptions to the unauthorized practice of law must be included in the Code of Paralegal Conduct ("CPC"). NFPA has never supported the unauthorized practice of law as evidenced in its Model Code ([Exhibit E](#), specifically Canon 1.8 and

Ethical Consideration 1.8(a), previously Canon 7, *et seq.*). However, NFPA recognizes that, when modifying *In re Opinion 24* in 1992, the Court opined that paralegals practice law (128 N.J. at 123), albeit with the supervision of attorneys. Consequently, the Court determined that such practices by paralegals were not considered the unauthorized practice of law. However, the absence of more specific clarification of this finding lends itself to the potential for blatant abuse of the omission. Clearly, this Report will be distributed and reviewed widely throughout the United States. Its impact should not be underestimated. Without a thorough review of the modification to *In re Opinion 24*, a reader may misinterpret the Committee's intention and exception to paralegals performing certain tasks. The ramifications could be devastating and costly to the wrongly accused.

While paralegals do not render legal advice or establish the client relationship, they do relay legal advice given by the attorney to the client in some instances, draft legal documents for final review and approval by the attorney, perform legal services for the client under the supervision of the attorney, and gain the client's trust and reliance. Naturally, paralegals are prohibited from holding themselves out as attorneys or giving legal advice without supervision by or accountability to an attorney. However, NFPA does not believe that prohibiting paralegals from continuing to perform tasks that have been performed in the past will increase or even maintain access to quality legal services in New Jersey.

NFPA suggests that the Report and/or the CPC should clearly state exceptions for paralegals working with supervision by or accountability to attorneys. Paralegals working under these circumstances have been performing the tasks defined as the practice of law, and delineated in *In re Opinion 24* for nearly 30 years. Additional and detailed information regarding the tasks currently performed by paralegals is located in the NFPA publication entitled "Paralegal Roles and Responsibilities," attached as [Exhibit "F."](#)

NFPA was very pleased to see that a substantial amount of its Model Code has been incorporated into the CPC developed by the Committee. The Model Code has been the foundation upon which NFPA bases its ethics opinions, including its opinions regarding *cyberlegalethics*, attached as [Exhibit "G."](#) It was NFPA's intent that each jurisdiction utilize components of the Model Code that would address their needs. NFPA believes that the first step in any regulatory program must be a unique code of conduct that provides necessary guidance and direction for professional responsibilities. Clearly, the Committee has worked diligently to create the CPC. NFPA applauds the recommended CPC and suggests that the Committee may want to review the Model Guidelines for Enforcement ([Exhibit "E"](#)) to assist in integrating a means through which to incorporate enforcement of ethical obligations into the existing structure within the State. To NFPA's knowledge, these are the only model guidelines for enforcement of a code for paralegal conduct in existence to date.

* * * * *

Recommendation 6 - The Supreme Court should modify the Rules of Professional Conduct as recommended herein to incorporate ethics and performance standards governing New Jersey lawyers in using the services of paralegals.

NFPA commends the work of the Committee in creating standards and revising the current Rules of Professional Conduct as they relate to attorneys utilizing paralegal services. Overall, the information developed by the Committee appears to be very comprehensive. However, NFPA must point out that there is no requirement for lawyers to employ or retain only licensed paralegals to perform paralegal work. With no mandatory requirement, attorneys could employ or retain the services of an unlicensed paralegal. Why would New Jersey paralegals support a program that may splinter the profession in terms of compensation as well as roles and responsibilities?

NFPA's comment about the lack of a recommendation concerning whether the regulation will be mandatory or voluntary is fully reviewed in its comments to Recommendation 4 (comment #1). The impact of having licensed and unlicensed paralegals is also included in NFPA's comments to Recommendation 4 concerning recoverability of fees for paralegal services (comment #9).

* * * * *

Recommendation 7 - The Standing Committee on Paralegal Education and Regulation should be continued and reconstituted. The Committee should be charged with the responsibility of developing and administering standards and rules governing paralegals in conformity with this report and subject to the Supreme Court's approval.

NFPA agrees with this recommendation, and strongly supports the inclusion of a majority of paralegals on this Committee. NFPA also supports the continued participation and representation of at least as many paralegals on the instant Committee as well as related committees that may be asked to address any portion of paralegal activity in the future, e.g., advisory, governing, administrative or disciplinary review committees. The participation of paralegals in all activities will serve the public interests as the Committee prepares to consider and finalize the Recommendations and related documents contained within the Report.

In all work conducted since 1974, NFPA has found it invaluable to have a wide variety of individuals involved in the review of activities and issues facing the paralegal profession in order to obtain a thorough perspective. Accordingly, NFPA routinely solicits participation from paralegals, judges, attorneys, educators, paralegal managers and lay people to enhance the value of its studies and findings.

With the reappointment process complete, NFPA noted that the Committee now includes seven (7) paralegal members, four (4) of whom are contract paralegals, one (1) of whom is employed by a title company and two (2) of whom are working for governmental employers. NFPA believes that the Committee should have input from various paralegal perspectives, and recommends that additional appointments be made

to include traditional paralegals employed by small, medium and large law firms. NFPA suggests that the Court also consider appointing a paralegal manager to the Committee for a different viewpoint. Over the years, NFPA has found that a true lay person brings a unique and much-needed perspective to discussions as well as the decision-making process. The Court has appointed the Clerk of Courts to the lay person position on the Committee. NFPA suggests that the Court consider the additional appointment of a true lay person - one who is not involved with the legal system.

NFPA strongly supports the continued study delineated in this Recommendation. We encourage the Court to charge the Committee to study and establish advanced competency recognition for paralegals demonstrating an established level of knowledge and skills. This will provide New Jersey paralegals with an opportunity to enhance their careers and expand their opportunities. To this end, NFPA submits that the Committee should consider the Paralegal Advanced Competency Examination ("PACE") as the method through which such recognition is accomplished. (See [Exhibit "D."](#))

* * * * *

Recommendation 8 - Operating standards, guidelines and rules should be developed and administered by the Committee subject to the Supreme Court's approval.

Recommendation 9 - An administrative office should be established charged with the operational responsibility for licensing individuals as paralegals pursuant to the rules governing licensure and conduct of paralegals, subject to the Committee's direction and the Supreme Court's oversight.

NFPA will not comment upon the administrative organization and budgets for the proposed regulatory program set forth in the Report since it believes that this is something better left to the Committee, the Court and paralegals within the State of New Jersey. NFPA urges the Committee to leave adequate room for flexibility as your process is developed.

CONCLUSION

Once again, NFPA applauds the efforts and comprehensive work of the Committee evidenced in this Report. NFPA commends you and stands ready to assist in any way as you review the comments received and finalize your submission to the Court.

The paralegal profession has flourished out of a need for more cost-effective legal services. Employment opportunities for paralegals are extensive throughout the private and public sectors. The profession has become better recognized as being capable of handling a variety of tasks in a variety of situations. New opportunities continue to proliferate. The paralegal profession will continue to thrive as more firms, companies, and the government entities recognize that paralegals handle tasks that allow more people to be served.

Paralegals, educators, lawyers, courts and members of the public must continue to work together. Each group brings a unique perspective; but all have a common goal - to create and maintain a system that will effectively meet the needs of the public. NFPA urges the Committee to continue the innovative steps taken in New Jersey. Continue to consider the future of the paralegal profession and how paralegals can further assist to improve the legal services provided. Paralegals in New Jersey and across the country seek opportunities to enhance as well as expand their knowledge, skills and responsibilities. NFPA hopes that members of the Committee will continue to recognize and encourage the positive progress of the paralegal profession.

Attachments:

- Exhibit A - [Statement on Issues Affecting the Paralegal Profession](#)
- Exhibit B - [Core Listing of Classes](#)
- Exhibit C - [Model Act for Licensure](#)
- Exhibit D - [PACE: Future of the Paralegal Profession; and PACE: Registered Paralegal](#)
- Exhibit E - [Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement](#)
- Exhibit F - [Paralegal Roles and Responsibilities](#)
- Exhibit G - Cyberlegalethics Opinions ([96-1](#) and [96-2](#))

FOOTNOTES:

1. In its 1990 survey, the Legal Assistant Management Association (LAMA) found that 72% of its members require a bachelor's degree as minimum criteria for hiring, and 31% require a bachelor's degree and paralegal certificate. NFPA's *1991 Compensation and Benefits Survey* revealed that 59% of the paralegals responding had a bachelor's degree or higher. The results of the 1993 survey by *Legal Assistant Today* reflected that 58.4% of the paralegals responding had a bachelor's degree and higher. NFPA's *1993 Compensation and Benefits Survey* reflected that 62% of the paralegals responding have a bachelor's degree and higher. In its *1994 Comprehensive Legal Assistant Utilization Survey*, LAMA found that 72.5% of its members required a bachelor's degree as a minimum criteria for hiring. NFPA's *1997 Compensation and Benefits Survey* reflected that 53% of the paralegals responding have a bachelor's degree and higher.

2. Comment to Recommendation 3

3. 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." NFPA agrees with the American Bar Association that the terms "paralegal" and "legal assistant" are synonymous and used interchangeably; however, NFPA members have adopted "paralegal" as the preferred term for the profession.

4. "Retained" refers to contract paralegals (also known as "freelance paralegals" or "independent contractors") who also work with supervision by and/or accountability to a lawyer and are qualified

through education, work and/or experience to perform legally substantive tasks that, absent the paralegal, would be performed by the attorney.

5. These individuals are sometimes referred to as "independent paralegals" or "legal technicians," but are not engaged in the unauthorized practice of law since they work pursuant to statute, administrative regulation or court authority.

6. Section entitled "Other Considerations and Recommendations - Enforcing the Licensure or Certification."