



## National Federation of Paralegal Associations, Inc.

### **POSITION STATEMENT ON DISBARRED ATTORNEYS WORKING AS PARALEGALS (referencing NFPA Resolutions 01S-09, 01S-11, and 05-02 approved by NFPA Delegates)**

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The National Federation of Paralegal Associations, Inc. (“NFPA”) believes that paralegals can and should play an integral role in the delivery of cost-effective legal and law-related services. However, the inherent risks posed by former attorneys to gain employment and perform legal tasks handled by paralegals is deemed to be unethical, and do not conform with NFPA's Character and Fitness Criteria.

Therefore, NFPA adopts the following position statement consistent with NFPA Resolutions 01S-09, 01S-11, and 05-02 on the issue of preventing disbarred attorneys working as paralegals. Additionally, this position statement expands upon the NFPA Position Statement issued in 2005 regarding Non-Lawyer Practice.

This position statement will unify the guidelines outlined in those resolutions, and will be henceforth utilized by NFPA in drafting responses to potential legislation or court rules related to disbarred attorneys working as paralegals. NFPA believes it is in the best interest of the paralegal profession to proactively advocate in the forefront of this issue.

#### **BACKGROUND**

The resolutions passed in 2001 and 2005 by NFPA delegates acknowledge that attorneys whose licenses have been revoked or are under suspension pose a substantial risk by being placed back into a position of trust and privilege as a paralegal which was removed when their license to practice law was revoked and/or suspended.

NFPA Resolution 01S-09, outlines NFPA's Character and Fitness Criteria which specifies that: “Any practicing paralegal shall be of good moral character, which means that such person:

...

b. has not been suspended or disbarred from the practice of law in any jurisdiction;

...”

NFPA Resolution 01S-11 which outlines NFPA's desire to uphold a strong professional code of ethics for new and current practicing paralegals and NFPA's desire to maintain the high level of integrity and credibility of the paralegal profession, resolves:

“...[I]t is in the best interest of the entire Paralegal profession that no suspended or disbarred attorney work in the capacity and/or hold the title of a paralegal or engage in and/or perform any substantive legal work.”

Most states and/or State Bar Associations have passed legislation or Rules of Professional Conduct either severely limiting<sup>1, 2, 3</sup> or outright prohibiting<sup>4, 5</sup> suspended or disbarred attorneys from employment and/or performing substantive legal tasks handled by paralegals under the supervision of an attorney. If allowed, employment of disbarred or suspended attorneys requires adherence to a supervisory protocol which exceeds that which is customary for other non-lawyer employees.

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<sup>1</sup> North Carolina

<http://www.ncbar.com/rules/rules.asp?page=47> Rule 5.5 Unauthorized Practice of Law ...

(e) A lawyer or law firm shall not employ a disbarred or suspended lawyer as a law clerk or legal assistant if that individual was associated with such lawyer or law firm at any time on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of disbarment or suspension.

(f) A lawyer or law firm employing a disbarred or suspended lawyer as a law clerk or legal assistant shall not represent any client represented by the disbarred or suspended lawyer or by any lawyer with whom the disbarred or suspended lawyer practiced during the period on or after the date of the acts which resulted in disbarment or suspension through and including the effective date of disbarment or suspension.

<sup>2</sup> Louisiana

<http://www.ladb.org/Material/Publication/2011-10-30%20ROPC.pdf> RULE 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(e) (l) A lawyer shall not:

(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

<sup>3</sup> Pennsylvania

<http://www.pacode.com/secure/data/204/chapter83/s217.html>

<sup>4</sup> Massachusetts

<http://lawlib.state.ma.us/source/mass/rules/sjc/sjc401.html>

Massachusetts Supreme Judicial Court Rule 4:01: Bar Discipline, Section 17, Action by Attorneys after Disbarment, Suspension, Resignation or Transfer to Disability Inactive Status.

...

(7) Except as provided in section 18(3) of this rule, no lawyer who is disbarred or suspended, or who has resigned or been placed on disability inactive status under the provisions of this rule shall engage in legal or paralegal work, and no lawyer or law firm shall knowingly employ or otherwise engage, directly or indirectly, in any capacity, a person who is suspended or disbarred by any court or has resigned due to allegations of misconduct or who has been placed on disability inactive status.

<sup>5</sup> Washington

<http://mcle.mywsba.org/IO/print.aspx?ID=1527>

In 1979, The American Bar Association (“ABA”) issued an opinion indicating the question of whether a law firm could employ a suspended lawyer depends on the legal definition of the practice of law in that state. ABA Committee on Ethics and Professional Responsibility, Informal Op. 1434 (1979)<sup>6</sup>. The ABA Committee quoted a previous, unpublished ABA opinion from 1967 which advises:

“An attorney should not employ a disbarred lawyer, even to do only office work and seeing no clients, because of the practical difficulty of confining his activities to an area which does not include practice of law, and because such employment would show disrespect to the courts.”

The ABA maintains an extensive history of advisement on this particular issue, and states have adopted their recommendations in varying degrees.<sup>7</sup>

### CONCLUSION:

There are a myriad number of decisions where disbarred or suspended attorneys working as paralegals have been unable to adhere to the same ethical rules they were bound by as attorneys. The National Federation of Paralegal Associations, Inc. does not support the employment of disbarred or suspended attorneys in any capacity within the practice of law.

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This position statement was prepared for NFPA by the Ad Hoc Committee on Disbarred/Suspended Attorneys as Paralegals. The Ad Hoc Committee was created by Resolution 13-2, passed by the NFPA delegation at the 2013 NFPA Policy Meeting in Hartford, Connecticut. The Vice President and Director of Positions & Issues was named as Chair of the Committee in the Resolution, and presented the Committee’s draft position statement to the Board of Directors for review in advance of the Fall Board Meeting held October 6, 2014, in Dallas, Texas, where it was approved by the Board, and published shortly thereafter.

The Ad Hoc Committee members were:

- Wayne D. Akin, Litigation Paralegal with the law firm Miller Nash, LLP in Portland, Oregon and a member of Oregon Paralegal Association.
- Sybil Taylor Aytch, RP®, M.Ed., Paralegal with Quarles & Brady LLP in Phoenix, Arizona, and member of Sacramento Valley Paralegal Association.
- Kate L Essex, CP®, Senior Law Specialist for CUNA Mutual Group in Madison, Wisconsin and a member of the Paralegal Association of Wisconsin.
- April Farmer, Paralegal with Jordan’s Legal Solutions in New Orleans, Louisiana, and member of the New Orleans Paralegal Association.

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<sup>6</sup> <http://www.americanbar.org/content/dam/aba/publications/YourABA/1434.authcheckdam.pdf>

<sup>7</sup> <http://www.americanbar.org/newsletter/publications/youraba/201212article11.html>

- Stephen Imondi, RP®, Legal Assistant for the Office of General Counsel at Brown University in Providence, Rhode Island, and a member of the Rhode Island Paralegal Association.
- Charles R. Mingle, RP®, Senior Paralegal with National Vision, Inc. in Atlanta, Georgia and member of the Georgia Association of Paralegals.
- Lynne-Marie Reveliotis, President/Owner/Manager, LMR Enterprises LLC in Bridgewater, Massachusetts, and a member of the Massachusetts Paralegal Association.
- Mary C. Swedo, RP®, Pa.C.P., Corporate Paralegal at Adhesives Research, Inc. in Glen Rock, Pennsylvania, and a member of Central Pennsylvania Paralegal Association.
- Lisa Vessels, RP®, CP®, FRP, Elite Systems Docket Manager for Duane Morris LLP in Miami, Florida, NFPA Vice President and Director of Positions & Issues, and member of the South Florida Paralegal Association