



National Federation of Paralegal Associations, Inc.

Please Reply To:

S. Kristine Farmer
Vice President and Director of Positions & Issues
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June 17, 2003

Ms. Lanet S. Asmussen
Clerk of the Nebraska Supreme Court/Court of Appeals
P O Box 98910
Lincoln, Nebraska 68509-8910

Re: *Proposed Rules Governing the Unauthorized Practice of Law*

Dear Ms. Asmussen:

The National Federation of Paralegal Associations, Inc. (NFPA) is a non-profit professional organization representing the largest number of individual members in the United States. The Rocky Mountain Paralegal Association (RMPA) is a voting member of NFPA and is comprised of members from Nebraska, Colorado, South Dakota, Utah and Wyoming.

We would like to take this opportunity to provide you with some information about our Federation and to offer a brief comment on the proposed Rules Governing the Unauthorized Practice of Law (the "Rules").

Background

As a member-driven organization, NFPA prides itself on the professionalism of its members and its position as a leader in the profession for over 25 years. NFPA routinely monitors legislation, case law, proposed changes to rules of professional responsibility, and ethics opinions that affect the paralegal profession. In monitoring these activities, NFPA has reviewed the Rules, which would propose changes to Nebraska's definition of the practice of law.

NFPA shares your goals to maintain public trust and confidence in our legal system and we also believe that it is crucial for a strong legal profession to be dedicated to serving and protecting the public. NFPA members support that premise when they created and adopted the NFPA Model Code of Ethics and Professional Responsibilities in May 1993, delineating the principles for ethics and conduct to which every paralegal should aspire. NFPA and RMPA believe it is important to emphasize that its members do not endorse or support the unauthorized practice of law.

NFPA members affirm the paralegal profession as a self-directed profession that supports increased quality, efficiency and accessibility in delivering legal services. NFPA promotes growth, development, and recognition of the profession as an integral partner in delivering legal services. Further, NFPA encourages study of means to improve access to legal services and supports any activity intended to increase the use of paralegal services for delivering legal services.¹

Approximately 84% of paralegals responding to NFPA's 2001 Compensation and Benefit Report have formal education in paralegal studies. Paralegals who have passed NFPA's Paralegal Advanced Competency Exam (PACE), as well as many of those in local paralegal and bar associations, have a mandatory continuing legal education requirement, including an ethics component. Many of NFPA's local member associations have also adopted, and their members are subject to, a Code of Ethics and Professional Responsibility. In addition, some jurisdictions have adopted ethical guidelines for paralegals.

Our stated mission is to expand the practice of paralegals. By working with other members of the legal team, educators, the judiciary and legislators, we have and are continuing to expand our profession in a responsible and ethical manner.

Since its formation, NFPA has:

- monitored legislation, case law and researched reports on various issues that could affect the paralegal profession;
- worked with and testified before many organizations such as legislatures, bar association task forces, and court committees on issues related to paralegal participation in delivering legal services and the paralegal profession generally;
- filed *amicus* briefs with courts throughout the United States on several issues that could affect the paralegal profession;
- participated in the ABA's Commission on Non-Lawyer Practice;
- participated in the New Roles and the Law Conference in 1996; and,
- adopted an advanced competency examination, PACE.²

In reviewing § 2.5 of the Rules relating to nonlawyer assistants and also reviewing the referenced Canon 3, EC 3-6 of the Nebraska Code of Professional Responsibility, we note that Nebraska does acknowledge the delegation of certain tasks to nonlawyer assistants, but does not specifically define or use the term "paralegal." To that end, we provide you with the following information.

¹ See attachment 3, NFPA's Paralegal Responsibilities.

² PACE is the Paralegal Advanced Competency Exam that was developed and marketed to paralegals, whether members of NFPA or not. See attachment 7.

Definition

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.

RMPA defines a paralegal as:

A Paralegal 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 qualified person may be retained or employed in a traditional capacity by a lawyer, law office, government agency, or other entity or is authorized by administrative, statutory or court authority to perform this work; or this qualified person may be retained or employed in a non-traditional capacity, provided that such non-traditional capacity does not violate applicable unauthorized practice of law statutes, administrative laws, court rules, or case law.

NFPA prefers the term "paralegal" for our profession. The term "legal assistant," which may be used interchangeably with the term "paralegal," can mean anything from a legal secretary, to a paralegal, to an assistant district attorney in at least one jurisdiction. There may be many non-lawyers who work in a legal setting, each performing different tasks. It is becoming increasingly difficult for the general public to understand the different roles within the legal field. For those reasons, NFPA recommends defining the term "paralegal" in the body of Section 2.5 of the Rules.

To address the concern outlined above, please give consideration to adding additional language to Section 2.5 of the Rules to include the definition of paralegal, so that it reads in its entirety as follows (insertions are italicized and underlined):

2.5 Nonlawyer Assistants

Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Canon 3, EC 3-6, of the Code of Professional Responsibility. *In this instance, the term nonlawyer also includes "paralegals." The term "paralegal" is defined 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.*

Should the Nebraska Supreme Court adopt these Rules, NFPA and its member associations strongly encourage the Court to include a mechanism and suggested criteria that allows for regulated practice by non-lawyers that increases access to justice for low to middle income consumers, and the expansion of the role of trained, qualified paralegals and others.

The needs of the public seeking high quality, cost effective legal services must be answered. This ever-increasing need has made it necessary for attorneys to seek new and innovative ways to meet those needs and continue to maintain the integrity of the profession and maintain a profitable law practice. Paralegals working in an expanded role performing substantive legal work can help meet those needs.

Conclusion

The legal profession must recognize its responsibility to provide the public with the opportunity to choose different levels of expertise and cost, depending on the type of services needed. The continued existence of unmet legal needs should be of paramount concern to lawyers, paralegals, and nonlawyers alike. The legal community must strive to provide a greater variety of legal services to allow more freedom of choice, easier access to professional services for the public, and reduced costs.

NFPA and RMPA are confident that the inclusion of the additions suggested above would serve well the residents of the State of Nebraska. NFPA and RMPA appreciate the opportunity to be heard on this matter.

If you have any questions or would like additional information, please feel free to contact me at the telephone number and email address listed above, Vicki L. Jaynes, RMPA's President at (303) 866-0543 or jaynesv@hro.com, or Debra Hindin-King, RMPA's NFPA Primary Representative at (303) 295-8436 or at dhindin-king@hollandhart.com.

Thank you for your attention and courtesy.

Respectfully,



S. Kristine Farmer
Vice President and Director of Positions & Issues

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Enclosures

ENCLOSURES

1. NFPA – *Statement on Issues Affecting the Paralegal Profession*
2. NFPA – *Model Code of Ethics and Professional Responsibility*
3. NFPA – *Paralegal Responsibilities*
4. NFPA – *Your Source for Paralegal Information*
5. NFPA – *The Paralegal's Partner in Progress*
6. NFPA – *What is a Paralegal? Often-Asked Questions about the Paralegal Profession*
7. NFPA – *PACE – Paralegal Advanced Competency Exam*
8. NFPA – *2001 Paralegal Compensation and Benefits Report*
9. NFPA – *Pro Bono – Paralegals Making a Difference*
10. NFPA – *National Paralegal Reporter*