

**National Federation of Paralegal Associations, Inc.**  
**Position Statement on the Unauthorized Practice of Law and Rogue Paralegals**  
*Draft for Approval dated June 8, 2022*

NFPA is recognized as a national leader for the paralegal community and with a strong commitment to advancing the paralegal profession. Historically, NFPA has issued position statements pertaining to the paralegal profession on topics such as non-lawyer practice, regulation of the profession, diversity, and disbarred/suspended attorneys working as paralegals. Concerned NFPA members realize reliance on technology for internet marketing and social networking creates opportunities for intentional and unintentional incidents of the unauthorized practice of law.

Many NFPA member associations have received complaints related to non-attorneys, who identify as paralegals, providing services directly to the public in direct violation of state regulations governing the unauthorized practice of law (“UPL”). These so-called paralegals are often referred to as “rogue paralegals.” The problem occurs even in states such as Arizona, California, Nevada, and Washington that have programs which allow qualified, non-attorneys to provide limited services to the public without attorney supervision. Several NFPA members and member associations have attempted to report these UPL violations but have faced various forms of resistance from regulating authorities.

In 2017, member associations asked NFPA to issue a position statement on the issue of UPL, and more specifically, the rogue paralegal problem. NFPA promotes the growth, development, and recognition of the paralegal profession as an integral partner in the ethical delivery of legal services. This objective includes educating legal professionals and the public about what constitutes UPL and the rogue paralegal problem. Generally speaking, the public does not understand what a paralegal may and may not do without attorney supervision, much less the concept of UPL or the potential harm a rogue paralegal can do to their case. For many associations, there is no recourse for reporting paralegal UPL.

NFPA member associations believe this position statement on UPL, and rogue paralegals will provide guidance to help associations address the issue locally, add more weight when reporting UPL to regulating authorities, provide guidance to rogue paralegals who may otherwise not understand they are engaged in UPL, and finally, give paralegal educators tools to teach paralegal students about UPL and how to avoid committing it.

**The Issue**

NFPA has seen an alarming increase in the number of non-attorneys providing legal services to the public as paralegals without attorney supervision and outside the scope of Limited License Legal Technician (LLLT) or similar authorization. The issue of rogue paralegals, as defined above, is far reaching and harmful to both the public and career paralegals who adhere to the restrictions placed by UPL regulations. In many jurisdictions, regulating authorities are not enforcing current criminal and civil sanctions unless reported by a rogue paralegal's client. Paralegals appearing to engage in UPL and/or operating in a rogue capacity have been

observed on social media forums and elsewhere online in a number of states including Alabama, Indiana, Minnesota, New York, Oregon, Pennsylvania, and Vermont.

#### What is UPL?

The concept of UPL is regulated on a state-by-state basis, yet there is no standardized definition that applies throughout the country. The ABA Model Rules, state bar associations, and various paralegal associations have attempted to narrow the scope to include preparing documents, giving legal advice, assisting in hearing preparation, and generally applying facts to law, in service to the general public, without the supervision of a licensed attorney. Given the definition of UPL varies by jurisdiction, paralegals must review their local regulations and consult an attorney with questions about what is and is not permitted in their jurisdiction. A UPL regulations by state chart is attached as **Appendix A**.

Members of the *Ad Hoc UPL Position Statement and Rogue Paralegal Committee* conducted internet and social media searches to identify examples of paralegals committing UPL. Some of the original companies and individuals flagged by the associations sponsoring the original agenda topic are included, with a number of examples found in **Appendix B**.

Another form of UPL is inadequate attorney supervision, which is more frequently prosecuted than rogue paralegals, but is just as problematic. Additionally, there are many cases where an unlicensed attorney violates UPL regulations. Examples of cases related to failure to supervise and attorney UPL are included in **Appendix C**.

**Comment [MS1]:** Per Region V's recommendation, this section was moved into an appendix.

#### **Paralegal Education and UPL**

In 2019, a survey of five questions were posed to paralegal program students regarding ethics, ethics training, ethical rules and UPL. The questions and cumulative responses are included in **Appendix D**. A small, but noticeable, sampling of respondents indicated that drafting legal documents for the public, paid or unpaid, is perhaps or always ethically acceptable. It is NFPA's position that this minority is likely responsible for the examples provided in **Appendix B**.

**Comment [MS2]:** Per Region V's recommendation, this section was moved to an appendix.

Most schools operate under the theory that their graduates will find jobs in which competent, licensed attorneys directly supervise them, consequently, UPL is frequently treated as a small component of ethics training. The reality is that UPL can occur at every level of law practice from attorneys to staff. Paralegals need to be aware not only of those things which they can and cannot do as paralegals, but they also need to be able to recognize incidences of UPL when committed by other legal professionals.

The curriculum fails to account for how much the paralegal industry has changed from traditional, brick & mortar to remote working and the evolution of freelance/virtual/ contract paralegals and special designation paralegals. Many of the texts and lessons are out of date/out of touch.

We have seen an increase in paralegal programs and instructors telling their students that virtual and freelance paralegal work is a legitimate alternative to seeking employment in a law office or for use as a stopgap until they find full time work. This is a recipe for UPL disaster.

Working freelance or virtually is the equivalent of working without a net and should not be attempted by anyone with less than a minimum of five years of supervised, office experience and minimal training in business management.

Instructors and programs are missing fundamental components in their lesson plans. It is imperative that they address the increase of remote working, growth of the freelance/virtual/contract paralegal industry, and the overall reliance on all things digital. UPL is a major component of ethics training and needs to be treated as such. A sample lesson plan is included in **Appendix E** as a resource for educators.

### **NFPA Ethics Opinions**

The NFPA Ethics Board provides informal opinions on ethical issues facing paralegals, as well as answering fundamental ethics questions and educating paralegals, legal professionals, and the public about legal ethics through CLEs and articles. Since its creation in 1993, the NFPA Ethics Board has issued eight (8) ethics opinions about UPL.

- (1) [NFPA Informal Ethics and Disciplinary Opinion No. 16-1](#) What are the general ethical duties of a paralegal when communicating via social media?
- (2) [NFPA Informal Ethics and Disciplinary Opinion No. 07-01](#) Whether or not volunteering to draft bylaws or being asked to draft bylaws for a “Neighborhood Association” would be an ethical violation?
- (3) [NFPA Informal Ethics and Disciplinary Opinion No. 06-03](#) Can a paralegal continue to work in a law office during the thirty (30) days his/her attorney supervisor has been suspended from the practice of law?
- (4) [NFPA Informal Ethics and Disciplinary Opinion No. 05-2](#) What are the ethical implications concerning disbarred attorneys teaching paralegal courses?
- (5) [NFPA Informal Ethics and Disciplinary Opinion No. 05-1](#) What are the ethical implications surrounding paralegals attending and signing in for an attorney at a CLE course?
- (6) [NFPA Informal Ethics and Disciplinary Opinion No. 2000-1](#) What language relating to a paralegal's education, training, experience, or recognition can be included in advertising to the general public?
- (7) [NFPA Informal Ethics and Disciplinary Opinion No. 96-2](#) What are the ethical implications concerning the unauthorized practice of law as it relates to paralegals communicating in cyberspace?
- (8) [NFPA Informal Ethics and Disciplinary Opinion No. 95-5](#) Are contract paralegals retained by attorneys in law firms, corporations, and other legal entities, required to comply with the same ethical obligations as employed or traditional paralegals?

### **Freelancer Information**

Freelance paralegals, sometimes known as virtual or contract paralegals, provide services such as litigation support, document drafting, and legal research to licensed attorneys and law firms. These paralegals provide their services on a contract basis, and often contract to multiple attorneys and law firms at the same time. Freelance paralegals are in business as are self-employed, 1099 contract workers; many choose to form corporations or LLCs and absorb the overhead expenses of an employer such as software licensing and hardware. These business

owners are responsible for billing their attorney-clients, collecting on invoices, and ensuring their services meet the legal and ethical requirements of their attorney-clients.

Many experienced paralegals provide services on a freelance basis, both in-office and virtually. However, concerns arise when inexperienced paralegals begin freelancing without an in-depth knowledge of law office procedure, proper attorney supervision, and an *insufficient understanding* of the constraints of UPL. The most concerning trend is students, or recent graduates of paralegal programs, starting out as freelance paralegals with no law office experience. Experienced freelance paralegals will have various controls in place and will often collaborate with an attorney to advise them on preventing UPL while freelancing.

NFPA members experienced in providing freelance paralegals have provided a best practices checklist as Appendix B to this Position Statement. Of note, ensuring that the freelancer is not violating ethics rules. Conflict of interest, UPL, and confidentiality are of particular concern.

#### **How Local Associations Have Responded to the Issue**

NFPA invited local association members to respond to an informal survey about their experiences within their respective associations.

*How do you handle UPL at all stages? Specifically,*

- *reports alleging UPL by a paralegal that are made to your association; and,*
- *reporting of UPL by paralegals or other paraprofessionals within your jurisdiction/ association area.*

*This should not include disbarred attorneys or attorneys with suspended licenses unless they are claiming to be paralegals.*

The full list of responding Associations and their statements is found at **Appendix G**.

Generally, the responding Associations indicated they either: do not investigate any allegations or reports of UPL, or they refer those allegations to their local entity responsible for investigating and disciplining licensed attorneys and/or the judiciary. At least two responding Associations have Ethics Committees for this specific purpose.

#### **Exceptions to UPL**

Washington, Arizona, and Minnesota are among the states that have taken steps to expand the role of paralegals in the justice system, allowing certain tasks to be performed with limited or no attorney supervision. A few states, like New Mexico and California, permit legal document preparers to fill out forms for pro se litigants. While other states have exceptions for court navigators who assist pro se litigants in the court and courtrooms on procedural matters within an allowable scope. These programs help bridge the access to justice gap by increasing the role of paralegals in civil access to justice, and the role rogue paralegals play in the justice system is not aligned with the responsible regulation of the expansion of the paralegal role.

**Comment [MS3]:** This section was added as a consolidation of non-lawyer practice information throughout the document.

*Upsolve, Inc. and Rev. John Udo-Onon v. Letitia James, in her official capacity as Attorney General of the State of New York (22-CV-00627, United States District Court, Southern District of New York)*

In early 2022, Upsolve, a non-profit financial education and civil rights non-profit, filed a lawsuit against the New York State Attorney General seeking to challenge the New York UPL law, as applied to their program, on First Amendment grounds. In May of 2022, Upsolve won the injunction, allowing their program to aid low-income individuals by helping them respond in unpaid debt matters. The injunction only creates space for “professionals who are not lawyers to provide free legal advice on whether and how to respond to a debt collection lawsuit,” (Upsolve’s Complaint) to provide advice based upon a handbook that Upsolve will provide to and train volunteers. This narrow exception is an example of the potential for the thoughtful expansion of exceptions to UPL that will help to bridge the civil access to justice gap that has created a civil rights challenge in America.

**Comment [MS4]:** This is an important addition to the position statement. The ruling was decided after the submitted draft was completed.

**Options for Associations**

In the directive for this Position Statement, NFPA’s member associations requested that the committee put forth ideas to help local associations address UPL. After several years of research, noting that local associations do not have general regulating authority over paralegals, this Position Statement suggests the following ideas detailed below for local associations.

Educate Members

Educating members, especially student members, on the ins and outs of UPL and the Rogue Paralegal problem is crucial. Local association leaders should create educational materials and present regular CLEs to their members and communities. The NFPA Ethics Board is a valuable resource.

Local Association Policy

Local associations should have a comprehensive Code of Ethics which may be modeled on NFPA’s Code of Ethics and provide mechanisms for oversight and enforcement.

To best address the problems of UPL and Rogue Paralegals, local association leaders should create internal procedures for investigating and reporting incidents of UPL. The process may include collecting pertinent information about the Rogue Paralegal and the victim/witness. The local association may have a policy in place for revocation of membership or association issued credentials, and reporting to NFPA if the alleged offender is also a member of NFPA and a NFPA credential holder. The procedures should be easily available on the association website, and if abiding by a code of ethics is a material condition of membership or holding a local credential, an “opt in” at registration for agreement to abide. A sample local association policy is found in **Appendix G**.

Education of bar associations and regulating authorities

To begin addressing the issue of rogue paralegals, local association leadership should work to build relationships with bar associations, regulating authorities, judicial representatives, legislators, and other key decision makers. Relationship building is key to being heard by these

decision makers - discussing the problem, presenting examples, and pitching ideas to solve the problem will lend credibility to local association leadership

Local associations may want to create educational materials to share with outside organizations (see **Appendix I**). NFPA's **Advocacy Committee** and **Ethics Board** are resources available to assist. In addition to written materials, local association leaders should consider partnering with attorneys to present CLEs to lawyers, new paralegals, and the public about what is and is not UPL in their jurisdiction.

**Comment [MS5]:** The MPPC and Advocacy Committees will be combined per a proposal from both committees, set for approval by the Board of Directors at the June 21, 2022 meeting.

One of the challenges to dealing with rogue paralegals is the lack of understanding on the role paralegals should and should not play, and breaking stereotypes that paralegals working under the supervision of an attorney cannot perform certain tasks. It is incumbent upon us, as paralegals, to educate our bar associations and regulating authorities on the types of tasks paralegals can perform, and the ongoing issue of rogue paralegals.

**Comment [MS6]:** Moved above

#### Legislative/Regulation Changes

Regulating authorities, and those with the authority to address the issue, may not act against rogue paralegals without reports made directly by the harmed parties (clients). While this is frustrating for ethical paralegals driving our industry, it presents an opportunity for local association advocacy. Building relationships with key stakeholders positions local associations to promote regulatory and/or legislative changes. Prior to moving for legislation or rule changes, leadership should check-in with the regulators to ensure they understand the issue. Ideally, UPL regulations should include provisions aligned with those in **Appendix J**. Local association leadership may seek assistance from NFPA's Director of Positions & Issues to develop an advocacy plan for these types of policy changes.

#### **Conclusion**

NFPA maintains its position against UPL and the growing rogue paralegal problem, and continues to support legislation and adoption of court rules permitting non-lawyers to deliver limited legal services in accordance with appropriate legislation and court rules.<sup>1</sup> With the surge in unqualified, non-lawyer professionals providing services directly to the public without attorney supervision and outside the scope of such legislation and rules, it is in the best interests of all involved and affected that the ABA, local and state bar associations, and appropriate jurisdictional entities work to create and enforce policies and procedures to improve access to justice while protecting the industry and public from UPL and rogue paralegals.

#### **Appendices**

- A. **UPL Regulation by State**
- B. **Rogue Paralegal Examples**
- C. **Failure to Supervise and Attorney UPL Examples**
- D. **Student Survey and Responses**
- E. **Suggested Lesson Plan for Paralegal Programs**
- F. **Freelancer Best Practices**

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<sup>1</sup> See NFPA Position Statement on Non-Lawyer Practice 2017

- G. Local Association Experiences
- H. Bar Association Handout: What is the Unauthorized Practice of Law?
- I. Model Local Association Policy
- J. Key Provisions for Legislation or Rule Making

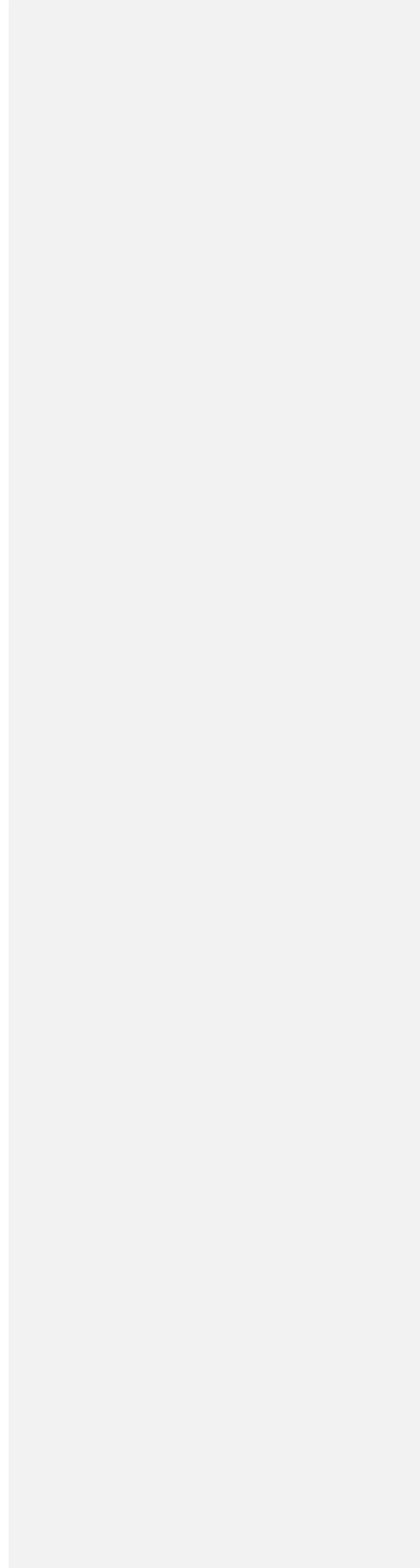
**Comment [MS7]:** Appendices reordered based on citation in position statement.

*Prepared for the National Federation of Paralegal Associations by the Ad Hoc Committees on the Unauthorized Practice of Law and Rogue Paralegals. The Ad Hoc Committees on the Unauthorized Practice of Law and Rogue Paralegals was created by Resolutions 17-03 and 17-05, passed by the delegation at the 2017 Policy Meeting in New Orleans, Louisiana.*

**Committee Members (2017-2022):**

- Pamela J. Starr, CBA, J.S.M., MATD, Georgia Association of Paralegals (Chair, 2021-2022, NFPA Ethics Chair 2015 - 2022)
- Maren Schroeder, RP(R), MnCP, Minnesota Paralegal Association (member 2017-2019, Chair 2018-2020, NFPA Director of Positions and Issues 2020-2022)
- Deana Stom, J.D., Rocky Mountain Paralegal Association (2019-2022)
- Lynne Hamilton, New Orleans Paralegal Association (2019-2022)
- Bill Strachan, New York City Paralegal Association (2017-2022)
- Mariana Fradman, New York City Paralegal Association (2017-2022)
- Jay Williams, TBLS-BCP, Dallas Area Paralegal Association (Co-Chair, 2017-2021)
- Linda Odermott, RP, OCP, Judge Advocate General Association of Legal Professionals (Chair 2017-2018)
- Wayne Akin, Oregon Paralegal Association (2017-2020)
- Jamie Collins, Indiana Paralegal Association (2017-2019)
- Chris Hansen, Illinois Paralegal Association (2017-2021)
- Lori Boris, RP(R), MnCP, Minnesota Paralegal Association (NFPA Director of Positions and Issues 2017-2020)

**Appendix A**  
***UPL Regulations/Procedures By State***



## **Appendix B Rogue Paralegal Examples**

- A paralegal company that identifies as a legal form provider for individuals and organizations seeking assistance with civil and criminal matters. The company provides paralegal assistance and sells self-help legal books and legal forms. The site does not provide detailed information about staff or experience, only references to 'a paralegal with experience in civil and criminal litigation with appellate experience.' Website has various disclaimers.
- Divorce services company operated by a certificated paralegal with less than 4 years of paralegal experience. The owner identifies as a family law (divorce and custody) mediator and paralegal who can help the public with simple to moderately complex divorce and custody matters. Offered services include consultations, explanations of divorce law, preparation/writing joint divorce or custody case court documents. Website has zero disclaimers.
- 'Professional Paralegal' with dubious credentials offering 'individual' document services, uncontested divorce, name change, wills, POAs, immigration documentation, summons and/or complaint, order to show cause, child support worksheet, lease, rental agreements, eviction preparation, stipulation of settlement, and a litany of 'professional' letters: complaint, parole letters, employment, landlord/tenant, demand, objection, and cease & desist. The owner has authored a book filled with inaccurate information about what paralegals can and cannot do, sells 'training' to wannabe and unsuspecting paralegals, and has openly claimed the right to offer services to the public and tell other paralegals that it is okay to do the same. When shown irrefutable proof that NY law specifically prohibits the services offered stated, 'It's all semantics ... and words can mean different things.' The site has no disclaimers.
- A virtual paralegal service that provides legal document preparation for pro se, family law litigants. Services are provided by paralegal with no mention of LLLT status on any page or in any footer. The site uses confusing and contradictory language – specifically, the footer language states 'We perform services under the supervision of licensed attorneys only' but the services are advertised and provided to the public.
- Document preparation company providing legal document preparation services to individuals during their court proceedings with 'unlimited telephone and email support from experienced document preparation professionals.' The service providers are not identified and the only reference to experience is 'over 30 years' experience'. Services include annulment, bankruptcy, child support, civil answer, custody, default judgment, divorce, eviction/unlawful detainer, guardianship, last will & testament, legal separation, living trusts, L.L.C. formation, name change, seal criminal records, small claims actions. There are no disclaimers on the site.
- Legal services company established in Washington in 2000 with national and international paralegal services since 2018 (all 50 states and Mexico). Services are provided by a 'jailhouse lawyer' and self-proclaimed executive criminal paralegal with no apparent formal training. The site claims 'case law wins cases, not talking attorneys' and promises to take cases to trial and appeals. There are no disclaimers on the site.

**Appendix C**  
**Examples of Failure to Supervise and Attorney UPL**

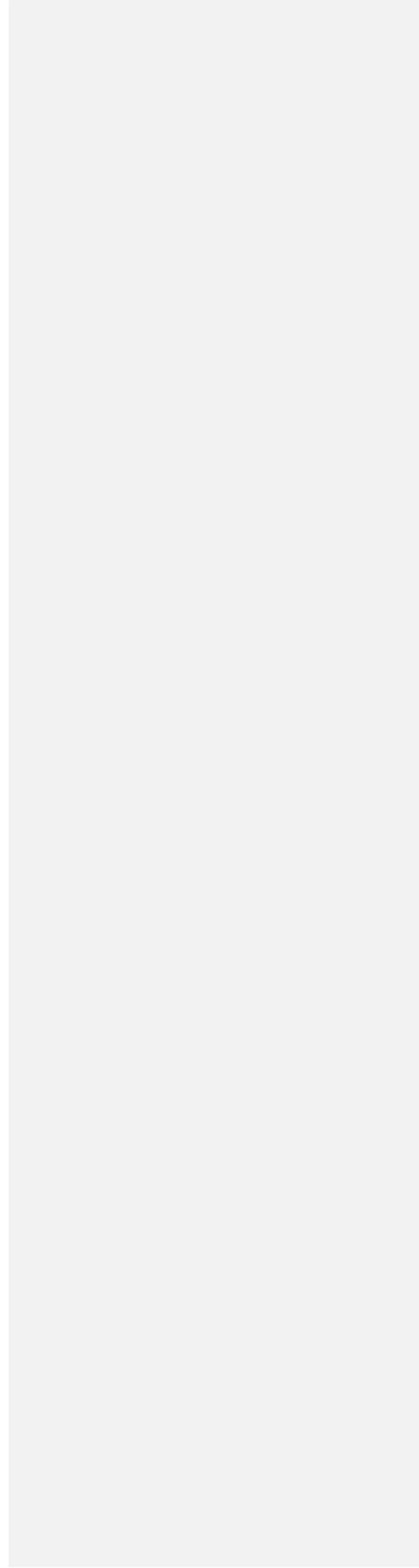
- Ashley Crawford, who worked on more than 100 cases in Criminal District Court in Orleans Parish during her eight months of employment as Staff Attorney with the Orleans Parish Public Defenders Office, was terminated in June 2019 after it was discovered that she was ineligible to practice law in Louisiana. Ms. Crawford does have a law degree, passed the Louisiana Bar exam but failed the ethics test twice which kept her from being certified eligible to practice law. The Orleans Parish District Attorney's Office referred the investigation of the case to the Attorney General of Louisiana to avoid the appearance of impropriety. Crawford was subsequently arrested, charged and in October 2019 pled guilty to three felonies and a misdemeanor for practicing law without a license: Count 1: Admitting that she knowingly received compensation acting as a lawyer, Count 2: That she altered her law certificate, Count 3: That she certified she was a lawyer in good standing, and Count 4: That she held herself out to practice law, even though unlicensed. Under the plea deal, Crawford was sentenced by Orleans Parish ad-hoc Criminal District Court Judge Jerome Winsberg to two years of probation, a one-year suspended prison sentence which she could be forced to serve if she violates her probation, and agreement to pay more than \$43,000 in restitution to the Orleans Parish Public Defenders Office for the pay she received while working there. Letters were sent out to all of Ms. Crawford's former clients but there have been no significant changes in their cases at this time.
- Leaford George Cameron of Burlington, New Jersey, was first arrested in 2013 and placed on probation after he was convicted in 2014 for impersonating an attorney. Mr. Cameron claimed he attended Cambridge University in London but after investigation by Homeland Security Investigations and U.S. Citizenship and Immigration Services, no records were found of Cameron being licensed to practice law in any state. Cameron used state bar numbers of actual licensed lawyers, one of which was an Administrative Law Judge in Washington, D.C., in his nationwide fake lawyering scheme when he filed legal cases in federal and state courts around the United States. He ran a fraudulent law practice between 2003 and 2015 where he allegedly accepted more than \$200,000 in bogus attorney's fees and defrauded more than 100 victims who were residents of Pennsylvania, New York, New Jersey, Connecticut, Florida, Illinois, Jamaica, and India. One of his victims lost their home and other victims were deported as a result of his fraudulent work. In February 2018, a federal jury in the Eastern District of Pennsylvania, found Cameron guilty of one count of mail fraud, two counts of wire fraud and three counts of making false statements. In July 2018, Cameron was sentenced to 12 years in federal prison followed by three years of supervised release.
- George Walthall, Jr., of Prattville, Alabama, was arrested on allegations of receiving stolen property in May 2018 and surrendered his law license in June of 2018 after an investigation by the Alabama Bar Association. His disbarment went into effect on June 14, 2018. In an apparently unrelated case, Walthall was later arrested, charged, and indicted in March 2019 with one count of attempted theft of property when he attempted to "obtain by deception" more than \$2,500 in cash and two charges of unlawful practice of law when he presented himself to two people as an attorney after he was disbarred. Mr. Walthall, a former Prattville city council member who served two terms and a former Prattville Municipal Court Judge, remains free on bonds totaling \$26,000 as of March 2019. Walthall can reapply to be admitted to the bar after five years but must retake the bar exam prior to being readmitted according to Bar rules, since he voluntarily

surrendered

his

law

license.



**Appendix D  
Student Survey and Responses**

1. Have you taken an ethics course as part of your paralegal program? Out of 100 students, 83% said that they did take an ethics course as part of their paralegal program while 17% said they did not.
2. Did your program's ethics training include reviewing case studies related to paralegals and UPL? Out of 99 students who responded, 62.63% stated that their training included reviewing cases related to paralegals and UPL while 19.19% said no that their training did not include reviewing cases related to paralegals and UPL and 18.18% stated they were unsure if their training included reviewing cases related to paralegals and UPL.
3. How prepared do you feel, as a result of your paralegal program, to identify and address ethical concerns in your paralegal career? Out of 98 responses received from the students, 84% felt they were prepared to identify and address ethical concerns while 16% did not feel they were prepared to identify and address ethical concerns.
4. How well do you feel you understand ethical rules regarding the unauthorized practice of law (UPL)? Out of 99 students who responded, 87% felt they understood the ethical rules regarding UPL while 13% felt they did not understand the ethical rules regarding UPL.
5. What is your understanding of ethical concerns for paralegals in the following scenarios? Note that some jurisdictions recognize designations (LLLT, LDA, LDP, etc.) that give non-lawyers more authority than paralegals in jurisdictions without these designations.

<b>Scenario</b>	<b>Not Ever Ethically Acceptable</b>	<b>Perhaps Ethically Acceptable</b>	<b>Always Ethically Acceptable</b>	<b>Only Ethical in Jurisdictions with Non-Lawyer Designations</b>	<b>Total</b>
Freelancing as an independent paralegal	11.34% 11 responses	48.45% 47 responses	17.53% 17 responses	22.68% 22 responses	97 responses
Drafting a legal document for a member of the general public, if approached and paid to do so	63.27% 62 responses	7.14% 7 responses	1.02% 1 response	28.57% 28 responses	98 responses
Drafting a legal document for a member of the general public, if unpaid	63.27% 62 responses	10.20% 10 responses	1.02% 1 response	25.51% 25 responses	98 responses

**Appendix E**  
***Suggested Lesson Plan for Paralegal Programs***

Incorporate UPL into the ethics component in all courses – something that requires more than a cursory review.

1. Present case studies relevant to the specific course.
2. Require active participation in a discussion on the case study.
3. Require active interaction from the instructor.
4. Make it 10% of the grade (5% Ethics / 5% UPL)
  - a. Devote a full lesson/module in each ethics course to UPL
    - i. Define UPL and discuss:
      1. How has the virtual/freelance/contract paralegal industry affected the scope of UPL?
      2. How do special designation paralegals avoid UPL?
      3. How has COVID and the increased use of remote employees increased the potential for UPL?
    - ii. Research and discuss ethics opinions
    - iii. Research incidents of UPL and discuss:
      1. how it happened
      2. how it could have been prevented.
    - iv. Invite expert(s) for a panel discussion
  - b. Students must be able to pass a written test – perhaps written by the NFPA Ethics Board – with 80% accuracy.

## **Appendix F**

### ***Freelancing Best Practices***

*Prepared by Pamela J. Starr (36 years as a paralegal, 14 of which freelancing) and Maren Schroeder (9 years). Freelance paralegals with a combined 23 years of experience freelancing.*

- If you plan to freelance 'on the side' while actively employed by a lawyer, law firm, or any entity, make sure you know their rules about moonlighting.
  - Always disclose to your employer that you are performing freelance work outside of work hours.
  - Do NOT freelance on company time or using company hardware, software, or resources.
  - Do NOT operate under the false assumption it does not matter. IT DOES.
- Meet with a business lawyer to determine the proper entity formation for your business, file all necessary formation documents.
- Have your lawyer DRAFT YOUR CONTRACT in compliance with the rules of the state in which you operate.
  - Confirm it includes a provision for appropriate attorney supervision and clearly outlines your duties (limitations) as a paralegal.
  - Make sure it contains language to ensure you get paid.
- Obtain any required license(s) / certifications for the state in which you operate.
- KNOW and UNDERSTAND the difference between employee, remote-employee, and independent contractor and the rules governing interaction with your contracting attorney.
- Learn the tax ramifications of working as an independent contractor.
  - Keep a completed W9 on hand to provide to every client.
- KNOW and UNDERSTAND the definition of UPL.
- Retain an attorney to consult when questioning whether an action is UPL.
- Confirm and follow the rules governing advertising your services.
- State clearly and prominently on all written media – business cards, flyers, paper advertisements, websites, AND social media outlets, "I am not an attorney and do not provide services directly to the public."
- Know your client base (attorneys and/or the public) and offer your services accordingly.
- Know and understand which services a non-attorney may provide to the public for the state in which you operate.
  - You are governed by the rules of the state in which your company is formed, not the state in which the client - attorney or the public - is based or where the case

is pending.

- When dealing with the public, preface everything you say or write with “I am not an attorney, nor do I set myself out to be an attorney. The information I am sharing with you is not and should not be construed as legal advice. If you need legal advice, I suggest you contact an attorney directly.”
- Be extremely careful to provide ONLY broad, general information about the law and procedures.
  - Never apply the law to a real-life fact scenario.
  - If you so choose, you may direct the non-lawyer to an alternate resource – Legal Aid, the state or local bar, court website(s).
  - Confirm the bar standing of all potential attorney-clients before sending out a contract.
- Create and follow a protocol to run conflicts checks.
- NEVER perform work/tasks without an EXECUTED contract.
- Memorialize - in writing - all assignments, projects, tasks, agreements with your attorney-clients.
- Know your personal limitations – NEVER accept an assignment outside your skill set or for which you lack the time and tools to complete.
- Obtain permission from your supervising attorney to contact the client or any interested party.
- Copy the attorney on all outgoing correspondence.
  - Preface all correspondence with “Sent on behalf of [attorney name] ...”
- Watermark all draft documents, “DRAFT PENDING ATTORNEY REVIEW AND APPROVAL.”
- REQUIRE your supervising attorney to provide written confirmation in writing that they have reviewed.
- Require written approval to e-sign, e-file, send, or perform any task that requires sharing work product, documents, with an outside party.
- If the attorney will be unreachable for any reason, confirm there is an alternate attorney available to supervise your work.

**Appendix G**  
***UPL at the Association Level***  
***Responses 2022***

Local association presidents and delegates were asked how their association responds to reports of alleged UPL. The responses as received are below.

Association	Response
Central Massachusetts Paralegal Association	This has not come up for the Central Massachusetts Paralegal Association.
Dallas Area Paralegal Association	In these situations, we would refer to the ethics committee to conduct an independent evaluation and if they determine it necessary, we would elevate to the state bar association. I was told that we do not, as an association, have authority for action, but the state bar does. Also, from our Bylaws, a member may be expelled, and membership terminated, or application rejected for conviction of a misdemeanor involving UPL.

Association	Response
Minnesota Paralegal Association	<p>We have an ethics Board/committee which takes reports (via email submission) which go to: 1) the chair(s); 2) Dir of Positions and Issues as an ex officio member; 3) President; 4) Dir of Prof. Development; 5) Reg. Chair; 6) up to 3 non-MPA members with expertise in legal ethics (at least one must be an attorney) and if available a member of the MN Lawyers Prof. Responsibility Board.</p> <p>These positions are elected or appointed to the ethics board with a letter of interest and resume. We ask that they submit these inquiries with as much detail as possible, including any rules/ethical cannons in question and any supporting detail/documentation with the submission. These reports remain confidential until reviewed and suggestions for response are brought back to the DPI and President. We accept inquiries re the ethical conduct of paralegals from any fellow paralegal, attorney, entity, court, etc. as it relates to MPA's Code of Ethics and/or the MN Rules of Professional Conduct, as they are imputed to paralegals. If it is something that involves the MN Rules of Prof Conduct, the Ethics Board will conduct the MN Lawyers Prof Resp. Board for input and opinion if applicable.</p> <p>The Ethics Board may also issue opinions on its own if a matter involves the ethical conduct of paralegals via other means. If the complaint involves an MPA member or MnCP, the Ethics board can make that known to the BOD for disciplinary proceedings/revocation of membership/credentials. Unless in response to subpoena, or by leave of court, the Ethics board cannot release info re an inquiry or documentation or identity to anyone else.</p> <p>The complaints will be reviewed by the Chair(s), kept confidential, and determine if formal action is warranted. If no formal action warranted, i.e., person is not an MPA member or MnCP, and not a clear violation of ethics, the chair drafts a response to the submission which is approved by DPI and President.</p> <p>If formal action warranted, the chair assigns a committee of members of the ethics board to research and draft a response on behalf of MPA. That committee must include an attorney, so no UPL is committed. Once complete, it must be approved by the full ethics board. Per MN Statute paralegals fall under the Attorney Rules of Prof. Resp and therefore any ethical conduct will be reported to the MN Lawyers Prof Resp. Board for their proceedings.</p> <p>MPA has tried in the past to report a violation, in which the statutes say to report to the County, which we did and then got referred to the local municipality police department. To which they told us to fill out a report.</p>

Association	Response
Missouri Paralegal Association	<p>We have both an ethics committee and a professional standards committee. We work with and refer to the Office of Chief Disciplinary Counsel. They decide if it should be investigated or not and will hold a hearing, if needed. They then refer on, after they have findings, to a Prosecutor in the proper jurisdiction for criminal charges or Supreme Court if it involves an atty.</p> <p>We have had atty UPL cases: they are suspended and still practicing, or their license was revoked, and they are hired as a para (or staff) but taking on clients themselves, etc.</p>
Northeast Indiana Paralegal Association	I am not aware of any instance in which we have been approached about this issue. I believe that if we were, we would probably take the steps which your Board took when it came up.
New Orleans Paralegal Association	This has not come up for the New Orleans Paralegal Association.
Paralegal Association of Central Ohio	<p>The Ohio Supreme Court governs UPL matters in this state – in fact, it has a “UPL Board” upon which one of PACO’s paralegals serves. Whenever any information about suspected UPL arises, it is reported directly to the Ohio Supreme Court. In some cases, complaints/concerns may be submitted to a local bar association who then forwards the information to the OH Sup. Ct.</p> <p>You may find more procedural information at Board on the Unauthorized Practice of Law (ohio.gov). From this web page, it states: The Board on the Unauthorized Practice of Law of the Supreme Court of Ohio is established by Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio and consists of thirteen members who are appointed to a three-year term by the Supreme Court. The Board conducts hearings, preserves the record, and makes findings and recommendations to the Supreme Court in cases involving the alleged unauthorized practice of law. The Board is also authorized to issue informal nonbinding advisory opinions on matters concerning the unauthorized practice of law.</p>

Association	Response
Rocky Mountain Paralegal Association	<p>Any allegation communicated to a Board member is immediately elevated to the President and Managing Director of Policy &amp; National Affairs for initial investigation and discussion of those findings.</p> <p>Within Colorado: If they determine additional attention may be necessary, including more in-depth investigation, the allegation and all associated information are forwarded to the Colorado Office of Attorney Regulation Counsel. <a href="#">The OARC maintains a public list of persons ordered to stop engaging in the unauthorized practice of law.</a></p> <p>If an individual is so enjoined from the practice of law in Colorado, RMPA permanently revokes their membership. Because RMPA territory covers five (5) states, RMPA post-investigation policy varies per each jurisdiction's requirements.</p>
Vermont Paralegal Association	<p>Vermont has only had one instance of UPL several years ago.</p> <p>The matter came to our attention when we had an "office" ask to advertise their services within our organization. After a review of the proposed ad, the Board realized what was being advertised was actually UPL by independent paralegals (or legal assistants). The process at that point in time was to advise that we could not allow the advertisement and advised the "office" that what they were advertising was actually UPL. We recall that that issue was then referred by the then Board to the state bar association for their review.</p> <p>Our organization does not attempt to independently verify allegations but rather refer the matter to the state bar association to review.</p>
Paralegal Association of Wisconsin	<p>PAW does not have any UPL procedure as an organization. If a UPL complaint is made on a SBWCP (State Bar of Wisconsin Certified Paralegal), the State Bar manages those complaints.</p>

## **Appendix H**

### ***Model Local Association Policy***

*This model policy was developed based on the current policy and procedure from the Minnesota Paralegal Association. Any policy adopted by a Local Association should be submitted for counsel review and recommendations before adoption by the Local Association.*

#### **Reporting to the Association**

[Local Association] will receive reports relating to the Unauthorized Practice of Law. Reports should be submitted to the President [or other Board member], stamped "CONFIDENTIAL" upon receipt, and [forwarded to the appropriate Committee/an ad hoc Committee be appointed] for investigation and recommendations. The identity of any complainant(s), member(s), credential holder(s), inquirer(s), employer(s), client(s), or any other individual identified or involved in the matter shall be considered confidential and not disclosed or published to anyone with the exception of those individuals comprising the Committee and/or the Board of Directors until an investigation is complete and any potential disclosure to authorities is reviewed by counsel.

#### **Investigation and Recommendations**

The Committee should collect relevant information about the complaint. This may include information provided by the complainant and information posted in public forums (i.e., social media, websites, etc.). The Committee should review the unauthorized practice of law regulation/statute and identify the regulating authority. The Committee should then prepare a statement of facts, law, and recommendation for counsel review. Once counsel review is complete, the document should be edited accordingly, and forwarded to the Local Association Board for formal action.

#### **Formal Action**

The Committee may recommend different types of formal action. Any formal action should be reviewed and conducted in close consultation with the Local Association's counsel.

1. Referral of complaint to appropriate regulating authority without findings. If the complainant is a client of the individual who is accused of the unauthorized practice of law, they should be referred immediately to the regulating authority.
2. If the individual is a member or credential holder, the Board may revoke such membership or credential [if permitted by the Local Association's bylaws and/or policies and procedures]. Any revocation action should provide the accused with due process, such an opportunity to present their side of the facts, and the Board or a panel of the Board should function as fact finders.
3. Submission of complaint, investigation, and counsel-reviewed findings to the proper regulating authority, along with contact information for the complainant, if applicable.
4. Publication of an opinion for educational purposes. The Committee may opt to use the complaint as a basis for member education. Any opinion or publication should ensure the complainant and accused are not identifiable by the reader.

**Appendix I**  
**Bar Association Handout**  
**What is the Unauthorized Practice of Law?**

**“UNAUTHORIZED PRACTICE OF LAW” (From NFPA)**

- Generally, the “unauthorized practice of law” is engaging in the practice of law by persons or entities not authorized to practice law pursuant to state law
- “Practice of Law” definition varies by state but generally includes the following:
  - Giving legal advice
  - Representing clients in legal proceedings
  - Preparing legal documents with no supervision
  - Evaluating a case/providing analysis and selecting an appropriate course of action
  - Fee splitting
  - Accepting or rejecting a case without approval from the supervising attorney

**Who is a “Rogue Paralegal?”**

A “Rogue Paralegal” is an individual who holds themselves out to provide legal services to the public without the direct supervision of a licensed attorney in the jurisdiction for which the services are being afforded.

**Why are “Rogue Paralegals” harmful to the public?**

“Rogue Paralegals” and their business practices are unethical and fraudulent. They prey upon the ignorance of an unsuspecting public causing loss of time and personal financial resources. They also undermine the public’s confidence in the legal profession and the practice of legitimate independent/freelance paralegals.

**What remedies might there be?**

NFPA endorses the passage of legislation to strengthen the investigation and prosecution of individuals who undertake to defraud consumers by their UPL.?

**How can the public respond to/prevent UPL?**

The NFPA encourages an individual who is aware of or has been harmed by a “Rogue Paralegal” to report them to the appropriate authorities within the state or local jurisdiction in which the offense has occurred. This may be the bar association, state attorney general or other authorized enforcement agency.

**This information has been provided as a public service by the National Federation of Paralegal Associations, Inc.**

## Appendix J

### **Key Provisions for Legislation or Rule**

*Note: This section will be updated by NFPA's Regulation Coordinator and/or Government Affairs Committee on an ad hoc basis.*

Please note: This is generally suggested language. Please collaborate with your local legislators, legislative researchers, and counsel, to draft language that works best with your state's laws.

1. Provide clear definitions

*Authorized Individual:* An authorized individual is someone who is licensed to practice law in the state or is authorized by law to provide limited legal advice.

*Complainant:* The Complainant is any individual or organization submitting a report of the Unauthorized Practice of Law to the Regulating Authority.

*Legal Advice:* Legal Advice is strategy, process, evaluation, or other action based upon the law and a specific fact scenario.

*Legal Information:* Legal information is dissemination of what the law says without applying the law to specific facts.

*Practice of Law:* The practice of law is the act of applying law to individual facts. This includes, but is not limited to, selecting forms for filing, preparing court documents, and providing Legal Advice.

*Procedure:* Procedure is how something is submitted to or processed in a legal action.

*Regulating Authority:* The Regulating Authority is the body authorized by law to regulate the Practice of Law.

*Unauthorized Practice of Law:* The Unauthorized Practice of Law is the act of practicing law by an individual or entity that is not an Authorized Individual.

2. Provide a regulating authority.

For the purposes of this section, the Regulating Authority shall be the [State] Supreme Court, or its designee. The [State] Supreme Court shall adopt rules for implementation of this section.

3. Mandate responsibility to the regulating authority.

Upon receipt of a complaint, the Regulating Authority shall investigate. If the investigation determines that the Unauthorized Practice of Law has occurred, or is occurring, the Regulating Authority shall bring an action against the individual or entity committing the Unauthorized Practice of Law.

4. Provide specific enforcement options for the regulating authority.

The Regulating Authority shall bring one of the following actions against someone believed to be engaging in the Unauthorized Practice of Law:

The Regulating Authority may bring an injunctive action to enjoin the accused party from engaging in the Unauthorized Practice of Law; and/or the Regulating Authority may refer the investigation and findings to a prosecuting authority for criminal prosecution.

5. Provide for consequences.

It shall be a gross misdemeanor under this chapter to engage in the Unauthorized Practice of Law.