

The National Federation of Paralegal Associations, Inc.

Position Statement on Legal Paraprofessionals

The National Federation of Paralegal Associations, Inc., (“NFPA”) believes it is in its members’ best interest to be prepared to respond to potential legislation and court regulation regarding Legal Paraprofessionals (“LPs”).

NFPA recognizes that states have taken varying approaches to LP practice, in that some programs are independent licensure and others are expansion of the scope of work LPs can do. This Position Statement addresses both types of programs and the regulations thereof.

BACKGROUND

Over thirty years ago, NFPA stated that,

In examining contemporary legal institutions and systems, the members of NFPA recognize that a redefinition of the traditional delivery of legal services is essential in order to meet the needs of the general public. We are committed to increasing the availability of affordable, quality legal services, a goal which is served by the constant reevaluation and expansion of the work that paralegals are authorized to perform. Delivery of quality legal services to those portions of our population currently without access to them requires innovation and sensitivity to specific needs of people.¹

The growing gap between those individuals who can afford quality legal services and those who must proceed without any legal representation whatsoever has become more visible in recent years. Many observers now recognize the desirability and fairness of increasing the availability of basic legal services as a means to increasing access to justice.

In February 2016, the American Bar Association adopted Amended Resolution 105, ABA Model Regulatory Objectives for the Provision of Legal Services, which urges each state’s highest court, and those of each territory and tribe, to be guided by the Model

Regulatory Objectives when they assess the court’s existing regulatory framework and any other regulation, they may choose to develop concerning LPs.²

The ABA's Model Regulatory Objectives for the Provision of Legal Services are as

¹ Legal Assistant Today/Winter 1985.

follows:

ABA Model Regulatory Objectives for the Provision of Legal Services

1. Protection of the public;
2. Advancement of the administration of justice and the rule of law;
3. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;
4. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections;
5. Delivery of affordable and accessible legal services;
6. Efficient, competent, and ethical delivery of legal services;
7. Protection of privileged and confidential information;
8. Independence of professional judgment;
9. Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs;
10. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

NFPA believes that paralegals can and should play an integral role in the delivery of cost-effective legal services. NFPA supports the concept of LPs delivering services directly to the public and views it as an extension of the paralegal profession.

This Position Statement was originally entitled “Position Statement on Non-Lawyer Legal Professionals” and was first approved at NFPA’s Annual Policy Meeting in 2017. The Position Statement on Non-Lawyer Legal Professionals was an addition to a 2005 Position Statement on Non-Lawyer Practice. The 2005 Position Statement was sunsetted at the June 2022 Non-Annual Policy Meeting with the intent of consolidating and updating NFPA’s position on non-lawyer practice.

In the process of updating the Position Statement, NFPA changes how it refers to this type of expansion of roles for non-lawyers. In no other industry is a professional referred to as “non” or not-something. For example, in the medical system, which serves as one model for expanding the practice of law, nurses are not called “non-doctors.” Therefore, NFPA now refers to these new legal service providers as “Legal Paraprofessionals,”

which is a broad enough term to encompass the type of legal service expansion paralegals are providing.

NFPA recognizes two paths forward for the utilization of LPs in narrowing the access to justice gap.

Independent Licensure

Some states have chosen to create independent licensure programs, wherein an LP is licensed by a regulatory body to provide a limited scope of legal services. As of the date of this Position Statement, these states include Washington (sunsetting program), Utah, and Arizona.

Ontario, Canada began licensing and regulating paralegals in 2007 to provide limited scope legal services directly to the public.²

Washington was the first state to adopt a legal paraprofessional licensing program. The Limited License Legal Technician (LLLT) program was established in 2013, with licensure beginning 2014. The LLLT program was sunsetted by the Washington Supreme Court in 2020, citing the high cost of administering the program.³ LLLTs who were licensed prior to the sunset will remain regulated and are permitted to continue practicing in the narrow scope of the program, which is focused on family law cases.

Utah enacted its Licensed Paralegal Practitioner (LPP) program in 2018 and began accepting applications in the spring of 2019.

Arizona began its Legal Paraprofessional program in 2021. Ten applicants were reviewed and approved for licensure on November 29, 2021.⁴

Expanded Scope

Other states have chosen to expand the scope of what a licensed LP is permitted to do under the supervision of an attorney who takes professional responsibility for the LP's work. As of the date of this Position Statement, Minnesota has taken this approach. In March 2020, the Minnesota Supreme Court authorized the Legal Paraprofessional Pilot Project, which expands the scope of what rostered LPs may do, subject to an attorney adopting professional responsibility for the work of the LP.

Numerous other states are currently working through versions of these two licensure models, including California, Colorado, Connecticut, Florida, Illinois, New Mexico, New York, North Carolina, and Oregon. All states are at varying stages in the process of

² <https://lso.ca/about-lso/osgoode-hall-and-ontario-legal-heritage/collections-and-research/research-themes/history-of-the-law-society>.

³ <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/decision-to-sunset-lllt-program>.

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[https://www.azcourts.gov/Portals/0/LP%20Program/LP%20Exam%20Statistics/120921LSP\(1\).pdf?ver=A vYFpVBnErq6DlwzZIFmQ%3d%3d](https://www.azcourts.gov/Portals/0/LP%20Program/LP%20Exam%20Statistics/120921LSP(1).pdf?ver=A vYFpVBnErq6DlwzZIFmQ%3d%3d).

creating a licensed LP program.

RATIONALE AND LANDSCAPE

Paralegals are educated and experienced legal service providers who perform substantive work that would otherwise be done by a lawyer. The limitations placed on what paralegals can perform are set forth by courts, regulatory tribunals, and state legislatures - which historically are heavily influenced by lawyers. However, as the United States has failed to innovate the delivery of legal services over its existence, the access to justice gap has grown.

According to the United Nations and the Rule of Law:

Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. The Declaration of the High-level Meeting on the Rule of Law emphasizes the right of equal access to justice for all, including members of vulnerable groups.⁵

In 2014, the United Nations Human Rights Committee asked the United States to account for its widening civil justice gap. The crisis-level civil justice gap disproportionately impacts the poor, communities of color, immigrants, and women. These cases typically revolve around eviction and foreclosure (housing), domestic violence (safety), termination of subsistence income (financial security), loss of child custody (family), and immigration removal proceedings.⁶

In 2015, the World Justice Project Rule of Law Index ranked the United States 21st out of 102 countries for civil justice, ranking 65th in affordability and 67th as free from discrimination.⁷

Not only has the United States not improved since 2015, it has become substantially worse. In 2021, the World Justice Project ranked the United States 41st out of 139 countries for civil justice. For affordability and access to civil justice, the United States ranked 126th, and last place for regional and income ranks.⁸

The “solutions” put forward by lawyers are the “solutions” that have been put forward for decades: increased funding for legal aid and increasing pro bono requirements for lawyers. The data does not support these “solutions” as enough to bridge the unmet legal needs of individuals in the United States.

⁵ <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>.

⁶ <https://www.law.com/nationallawjournal/almID/1202644834648/>.

⁷ <https://worldjusticeproject.org/rule-of-law-index/country/2015/United%20States/Civil%20Justice/>.

⁸ <https://worldjusticeproject.org/rule-of-law-index/country/2021/United%20States/Civil%20Justice/>.

Gillian K. Hadfield and Deborah L. Rhode wrote in their article, “How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering”:

The traditional response of the organized bar to the crisis in access to justice has been to promote increased funding for legal aid, increased pro bono obligations on practicing attorneys, and the creation of a government-funded “civil Gideon” right to counsel in some civil matters. But it is also painfully clear that these responses are wholly inadequate. Providing even one hour of attorney time to every American household facing a legal problem would cost on the order of \$40 billion. Total expenditures on legal aid, counting both public and private sources, are now just 3.5% of that amount. Fewer than two percent of all American lawyers work in legal aid or public defender jobs and pro bono work accounts for less than two percent of legal effort. Providing just one hour of pro bono assistance per problem to households facing legal difficulties would require over 200 hours of pro bono work per year by every licensed attorney in the country. No amount of volunteerism, ethical exhortation, or political pressure for increased taxation to fund legal services can ever fill the gap.⁹

Opposition to the provision of legal services by this new class of legal service providers - LPs - is based in protectionism of the attorney profession and logical fallacies unsupported by data. During a hearing on expansion of the Legal Paraprofessional Pilot Project in Minnesota, Chief Justice Lorie Gildea responded to the suggestion that attorneys do more pro bono with the following:

The problem, counsel, is that lawyers aren’t doing it. These are cases where the lawyers are not there. And we’ve preached and preached and preached and the MSBA [Minnesota State Bar Association] spent years doing a study, and had a taskforce, and blue-ribbon commission, whatever, and then nothing happened. The lawyers are not coming forward.¹⁰

It is clear, based on the work of the judiciary throughout the United States, that courts have gotten serious about addressing the access to justice gap. As a federation of local paralegal associations, it is our *responsibility* to be active in these conversations to shape the future of our profession specifically and the future of the legal services industry generally.

RECOMMENDATIONS

In order to facilitate improved access to the legal system, qualified LPs must be permitted to provide certain legal and law-related services directly to the public, including providing legal advice within a predetermined scope and appearance in related court and tribunal proceedings. To be effective, any LP regulation plan must

⁹ https://www-cdn.law.stanford.edu/wp-content/uploads/2016/07/Hadfield_Rhode-67.5.pdf.

¹⁰ Oral Arguments on Proposed Amendments to Minnesota Supervised Practice Rules; Case Number ADM19-8002; May 17, 2022.

balance public protection with consumers' individual needs, while being reasonable in nature and acknowledging the skills and expertise experienced paraprofessionals bring to the profession.

While education, experience, and continuing legal education ("CLE") requirements serve to ensure a degree of protection to the public, incidental errors and omissions may occur. In order to protect the public and the integrity of the profession, regulating bodies should include malpractice insurance requirements in any expansion of the provision of legal services. It should be noted, however, that this model standard is higher than that of attorneys, as many states do not mandate malpractice insurance for licensed attorneys. As paralegals, we recognize how dangerous this can be to the public, and urge regulating bodies to create uniformity in the requirement that practicing legal practitioners, LPs and lawyers, are required to carry malpractice insurance.

Based on NFPA's position that LPs are an extension of the paralegal profession, NFPA believes that any minimum requirements should include education, training, and experience. Therefore, NFPA recommends that regulating authorities require that candidates for any LP plan have paralegal credentials from a nationally recognized or state-level voluntary paralegal certification program, such as:

- NFPA's PACE Registered Paralegal® or RP® program
- NFPA's CORE Registered Paralegal™ or CRP™ program
- NALA's Certified Paralegal® or CP® program
- NALA's Advanced Certified Paralegal or ACP program
- NALS Professional Paralegal or PP program
- AAPI American Alliance Certified Paralegal Program
- California Certified Paralegal (CCP)
- Delaware Certified Paralegal (DCP)
- Florida Registered Paralegal (FRP)
- Illinois Accredited Paralegal (ILAP)
- Indiana Registered Paralegal (IRP)
- Certified Kentucky Paralegal (CKP)
- Louisiana Certified Paralegal (LCP)
- Minnesota Certified Paralegal (MnCP)
- New Jersey Certified Paralegal (NJCP)
- New York State Certified Paralegal (NYSCP)
- North Carolina Certified Paralegal (NCCP)
- Ohio State Bar Association (OSBA) Certified Paralegal
- Oregon Certified Paralegal (OCP)
- Pennsylvania Certified Paralegal (Pa.CP)
- South Carolina Certified Paralegal (SCCP)
- Texas Board of Legal Specialization Certified Paralegal (TBLS)
- Virginia Registered Paralegal (VARP)
- State Bar of Wisconsin Certified Paralegal (SBWCP)

By requiring a voluntary certification to participate in an LP program, regulators can

bypass some of the application and continuing education regulation, while still ensuring that LPs maintain active credentials following licensure or approval. NFPA encourages state-level regulators to work with local credentialing bodies in this process.

NFPA supports legislation and adoption of court regulations permitting LPs to deliver limited legal services directly to the public, provided that such legislation or court regulation includes:

1. Exceptions from the unauthorized practice of law within the confines of the respective state's regulations and statements on unauthorized practice of law;
2. Post-secondary education standards;
3. Character and fitness standards consistent with those required for attorneys in the applicable jurisdiction;
4. Ethical standards that are the same as attorneys in the state must adhere to, or substantially similar to those defined by the ABA and NFPA;
5. CLE consistent with NFPA's CLE standards;
6. Bonding or malpractice insurance requirements as set forth by the jurisdictional authority; and
7. One or a combination of the following:
 - a. Specialized post-secondary education in the specialized area of law in which the LP will be practicing;
 - b. An attorney-supervised experience requirement, including attestation by the supervising attorney(s) as to that experience; and/or
 - c. A requirement that LPs submit to advanced competency testing as to their specialty practice area.

NFPA believes regulating authorities should initiate the use of LPs in areas of law where there is a great disparity in representation such as family law, housing law, protection orders, and creditor-debtor litigation. However, paralegals skilled in areas such as estate planning, probate, immigration, simple business set-up, and bankruptcy may also substantively and significantly contribute to closing the access to justice gap by providing services to individuals who would not otherwise seek legal advice or counsel. Additionally, LPs could play a meaningful role in civil infraction cases, i.e. speeding tickets, and criminal expungements, which are additional areas where individuals may not otherwise seek legal advice. NFPA does, however, believe complex matters, such as high-dollar contract disputes, corporate disputes, high-asset dissolutions, and child abuse, should be reserved for the skillset of an attorney.

Finally, NFPA encourages regulating authorities studying and developing LP programs to heavily incorporate paralegals into the process. In states like Oregon and Minnesota, paralegals played a key role in developing LP programs; but in California, NFPA noted that there were no members of the Working Group that identified as paralegals. This is a disservice to stakeholders, because no one knows what a paralegal is capable of more than a paralegal.

CONCLUSION

It has taken many years of diligent work for paralegals to be recognized as legal professionals and to establish industry standards. NFPA desires to maintain the integrity of the paralegal profession and, together with American Association for Paralegal Education, has conscientiously worked to establish appropriate minimum standards of paralegal education, experience, certification criteria, ethical standards, CLE requirements, and bonding/insurance requirements. NFPA desires to keep these high standards intact. To allow LPs who have not met the minimum standards for the paralegal profession entry into the legal profession to deliver legal services directly to the public, or to identify themselves as paralegals, may ultimately jeopardize the integrity of the entire paralegal profession and in turn potentially harm the public.

With that qualifier, NFPA continues to support expanding paralegal roles and the delivery of affordable legal services by qualified legal professionals that enter alternate career paths, thereby improving access to justice for the underserved members of the public.

To further that resolve, NFPA supports the licensure of paralegals by creating programs for Legal Paraprofessionals, provided such programs include the recommended criteria outlined above in the regulation guidelines and build a solid foundation for such programs to be successful and self-sustaining. Any jurisdiction seeking to regulate LPs is to be commended for addressing access to justice issues.