



Should More Be Done To Credential PARALL

FAST FACTS

- Paralegals, or legal assistants, perform the same tasks as an attorney except for appearing in court, submitting signed documents to a court, and providing direct legal advice to clients.
- Law offices use paralegals to improve their profitability and deliver legal services to the public.
- There are various definitions of what constitutes the work of paralegals. The common thread is that a legal assistant works under the supervision of an attorney and performs substantive legal work.
- There is a growing debate over the certification and licensure of legal assistants.
- Voluntary certification by a nongovernmental organization remains the optimal credentialing process for paralegals.
- Mandatory certification is costly and impractical.
- Paralegals are increasingly regulated through the education process by an emphasis on ABA-approved education programs.



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LEGALALS?

By Timothy P. Flynn, Esq.

Two facts about legal assistants, also known as paralegals,¹ may surprise many attorneys. First, a paralegal is trained to perform the same tasks as an attorney except for appearing in court, submitting signed documents to a court, and providing direct legal advice to clients. The second surprising fact about paralegals, especially given this first fact, is that anyone can become a paralegal straight out of high school—high school diploma optional.

Less surprising is the fact that paralegals improve a law office's profitability. Law offices² throughout Michigan utilize legal assistants in efficient and innovative ways to improve the delivery of legal services to the public. Despite the robust growth of the profession, there remain, however, many attorneys who are unaware of what a paralegal is trained to do.

The purpose of this article is to describe the education and training process of paralegals within the context of the seemingly inexhaustible debate over their licensure and certification. The article concludes that voluntary certification by a nongovernmental organization remains the optimal credentialing process for paralegals. Mandatory licensing or certification of paralegals is costly and impractical. The present law office market does not require such mandatory licensing to protect the public from the unauthorized practice of law. Indeed, those that stand to get hurt the most by a mandatory licensing or certification regime are paralegals themselves.

DEFINITIONS

The American Bar Association (ABA) and the National Association of Legal Assistants (NALA) have defined a Legal Assistant as a non-lawyer performing substantive legal tasks under the direction and supervision of an attorney. Since 1984, NALA has adopted the following definition of a legal assistant:

*Legal Assistants (also known as paralegals) are defined as a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and experience regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.*³

The ABA's definition of a legal assistant has evolved over time. Since 1997, the ABA has defined a legal assistant in this way:

*A Legal Assistant or paralegal is a person, qualified through education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and who performs specifically delegated substantive legal work for which the lawyer is responsible.*⁴

The State Bar of Michigan has forged its own definition borrowing some phrases from an earlier ABA definition of legal assistant. Article I, Sec. 6, of the Bylaws of the State Bar of Michigan defines a paralegal as

*Any person currently employed or retained by a lawyer, law office, governmental agency or other entity engaged in the practice of law, in a capacity or function which involves the performance under the direction and supervision of an attorney of specially designated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the tasks and which is not primarily clerical or secretarial in nature.*⁵

The United States Supreme Court has recognized the common threads running through these definitions. They decided a now-famous case in 1989 in which the paralegal's role in our legal system was one of the central issues. In *Missouri v Jenkins*, the Court recognized that attorneys delegated substantive legal work to paralegals under their supervision:

*It has frequently been recognized in the lower courts that paralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate. Such work might include, for example, factual investigation, including locating and interviewing witnesses; assistance with depositions, interrogatories, and document production; compilation of statistical and financial data; checking legal citations; and drafting correspondence. Much such work lies in a gray area of tasks that might appropriately be performed by either an attorney or a paralegal.*⁶

This decision is frequently cited as the Supreme Court's "legitimization" of the paralegal profession.

Whether a paralegal is utilized properly in a Michigan law office depends largely on where the paralegal works. Some law offices themselves add to the confusion of terminology. One top Michigan law firm, for example, uses the terms "paralegal" and "legal assistant" to designate seniority and rank-in-pay distinction among its legal sec-



retarial corps. Under this firm's misuse of terminology, the terms are not synonyms and do not even apply to the paraprofessionals in the firm performing the traditional tasks of a legal assistant.

One of the purposes of this article is to encourage attorneys to utilize legal assistants according to the ABA, State Bar of Michigan, NALA, and U.S. Supreme Court definitions set forth above. There are two common threads in those definitions. First, a legal assistant works under the supervision of an attorney in the delivery of legal services to the public. The second and most critical aspect of the definition is that legal assistants perform substantive legal work.

The consensus on the definition of a paralegal, however, has not quelled the persistent national debate over paralegal licensure. Some in the profession argue that since paralegals are supervised by attorneys, there is no need for mandatory licensure, certification, or registration. Others contend that since paralegals are trained to assist in the delivery of complex legal services, there should be a mandatory competence credential in order to protect the public. A further complication arises because some paraprofessionals operate independently of attorneys in areas where legislation or administrative regulation allow nonlawyers to perform law-related tasks. There is a strong feeling among legal professionals that this amounts to the unauthorized practice of law from which the public must be protected. One response to this niche is to establish licensing for such paraprofessionals.

This article addresses the various modes of credentialing for paralegals. These include certification, licensing, and regulation. Licensure, the most restrictive form of credentialing, includes both practice and

title protection. Only individuals who have obtained the license are permitted to practice and hold the title. Licensure is performed by a state agency. Certification, on the other hand, implies a voluntary process where an individual seeks a professional credential but is not required to obtain it. Certification is administered through a non-governmental organization. The least restrictive mode of credentialing is registration. Registration merely requires an individual apply to the appropriate agency (governmental or private) for the title sought.⁷

With working definitions in hand, the professional formation and development of the paralegal must be examined. How do paralegals come to be paralegals?

EDUCATION AND PROFESSIONAL DEVELOPMENT

There are no barriers other than the law of the open market that restrict entry into the paralegal profession. It remains possible to become a paralegal with nothing more than a high school education followed by a period of on-the-job training. Modern paralegals, however, are most often trained in college-level legal assistant programs offering either an associate's degree, a bachelor's degree, or a post-bachelor's certificate.

In recent years, many paralegals obtained training and employment in law offices out of high school. There were few formal paralegal education programs available 25 years ago. Additionally, there was a blending during this era of the roles of legal assistants and legal secretaries. Typically, a law office employee would begin work as a typist or legal secretary out of high school and then be promoted through on-the-job experience to the position of paralegal. Perhaps for this reason, many senior attorneys continue to think of legal assistants as well-trained, multi-tasking legal secretaries.

Fortunately, the modern law office recognizes the distinct role of a paralegal. Along with this recognition has come a perceptible increase in the professional standards of the paralegal. Most firms now require their legal assistants to have some form of college degree. Increasingly, that degree must be a bachelor's degree. Ford Motor Company, for example, requires its paralegal staffers to have bachelor's degrees. In California, Florida, Texas, Louisiana, and Arizona, the law office market prefers a four-year college degree for paralegals. Modern law offices often require their paralegals graduate from ABA-approved paralegal education programs. The City of Detroit Law Department, for example, maintains this requirement of its paralegals.

Despite the rising standard of formal college education for legal assistants, there remain a variety of degree programs through which legal assistants acquire their professional credentials.

DEGREE PROGRAMS

The best estimate of the number of legal assistant degree programs in the United States is 1,009.⁸ In addition to the traditional associate's and bachelor's degree formats, many schools offer one-year certificates. Proprietary schools frequently offer accelerated and distance formats that bring into question the quality of legal specialty instruction. Informal training such as on-the-job training or an apprenticeship remain possible in the paralegal field today and were common modes of entry into the profession in decades past.

Among the variety of paralegal programs throughout the nation, the primary distinction is whether the program is approved by the ABA. Since 1975, the ABA's Standing Committee on Legal Assistants has driven the legal specialty curricula of the nation's colleges and universities by publishing guidelines and awarding approval status to institutions demonstrating compliance.⁹ Compliance is verified by reviewing extensive five-year reports submitted by the approved institution followed by a site visit to the institution by representatives of the ABA's Legal Assistant Committee.

The American Association for Paralegal Education (AAfPE), the national educators' organization, works closely with the ABA committee and assists in reviewing institutions for guideline compliance. AAfPE currently has 250 institutional members from the various colleges and universities offering paralegal training programs. Of these, 74 percent have been ABA approved.¹⁰ AAfPE's mission is one of professional development for the directors and educators of college level paralegal training programs.

Among the ranks of the AAfPE institutional members, 178 of the programs offer associate degrees and 73 offer bachelor's degrees.¹¹ The core of a legal study degree program includes courses in introduction to law, legal research and writing (including computerized legal research), legal ethics, litigation, law office procedures, and computerization. Electives are selected from courses focusing on a variety of substantive areas such as family law, criminal law, real estate law, probate, and personal injury law. The bachelor's degree option includes course electives in advanced areas of legal specialty such as bankruptcy, taxation, and employment law. In addition, the bachelor's degree option usually includes a firm grounding in the study of traditional academic areas such as literature, social and natural science, mathematics, philosophy, and social ethics.

In addition to these traditional academic training regimes, schools have adapted post-bachelor's certificates for students with bachelor's degrees in non-legal fields who seek training for employment in the law office. These certificates typically include only the legal specialty courses and can be completed in a one-year, full-time program of study.

It remains possible to become a paralegal with **nothing** more than a **high school** education followed by a period of **on-the-job** training.

LOOKING CLOSELY AT THE ROLE OF PARALEGALS: THE CALIFORNIA, NEW JERSEY, AND WISCONSIN EXPERIENCES

The California Bar created the Commission on Legal Technicians in 1989 to examine whether independent paralegals could play a role with the "overwhelming unmet need" for legal services. The commission recommended the creation of a special court rule authorizing nonlawyers to practice law (not including court appearances) in the areas of bankruptcy, family law, and landlord-tenant matters without attorney supervision. This limited licensure scheme was to be administered by the California Department of Consumer Affairs with the assistance of an advisory committee made up of two independent paralegals and an attorney. In order to obtain limited licensure under the California plan, an independent paralegal would need to pass an examination and meet certain educational requirements.

NALA and the State Bar of California opposed the commission's plan so it has never been adopted. In September 2000, however, California amended its Business and Professional Code to make it unlawful to claim to be a paralegal without satisfying specific qualifications.* These qualifications include performing "substantial legal work" under the direct supervision of an attorney. The statute makes it illegal for paralegals to perform any acts not authorized by the supervising attorney. Violations of the act constitute a misdemeanor.

A New Jersey committee similar to California's was created in the summer of 1993. The New Jersey Supreme Court Committee on Paralegal Education and Regulation investigated licensing and regulation issues for over five years. The committee issued a report to the New Jersey Supreme Court in June 1998 containing nine recommen-

dations. These recommendations included in part: paralegals should function under the governance of the Supreme Court and the Court should regulate their activities; to be eligible for licensure, the paralegal should receive a minimum level of education and training from an ABA-approved program; and paralegals should be governed by a proposed code of professional ethics.

Also among the committee's recommendations was a complex set of proposed rules through which the Supreme Court would regulate paralegals. They recommended the creation of a multi-tiered licensure scheme where plenary licensure would be available to those completing an ABA-approved paralegal education program and limited licensure would be available to those legal assistants who had received on-the-job training in a law office. A grandfather period was recommended for the limited licensure tier so that, over time, only those individuals completing an approved educational program could obtain licensure.

The proposed rules also included a complex structure as to how many licensed paralegals a law office could have for a certain number of attorneys and other artificial restrictions and regulations of paralegals. The proposed rules drew a strong



Most people currently entering the paralegal ranks are equipped with one of the degree or certificate credentials set forth above. Among paralegals with over 15 years experience, however, a significant percentage relied exclusively upon on-the-job training. As the profession has grown, a persistent debate has cropped up regarding the licensure, certification and/or registration of paralegals.

The licensing/certification issue has become political at both the national and local levels. It is largely this last group of nondegreed paralegals that see mandatory licensing schemes as a professional threat. Licensing and certification plans increasingly have called for college degrees and have included grandfather provisions to protect this group. The nondegreed paralegals have been a strong voice against certification or licensing regimes that require college degrees for licensing or certification exam eligibility. To fully understand this debate, one must be aware of the two competing national paralegal organizations and their local affiliates.

NATIONAL AND LOCAL PARALEGAL ORGANIZATIONS

Unlike attorneys, paralegals have two national organizations, the National Association of Legal Assistants (NALA) and the National Federation of Paralegal Associations (NFPA).¹² In addition to these two organizations, some local paralegal groups remain independent or tied to the state bar organization, such as the Legal Assistant Section of the State Bar of Michigan. In Michigan, the NALA affiliate is

known as the Legal Assistant Association of Michigan (LAAM). NFPA does not have a geographic Michigan affiliate but does claim affiliation with the South Bend, Indiana-based Michigan Paralegal Association, a group that has paralegal members from Southwest Michigan.

Both national paralegal organizations came into being as a response to the robust growth of the profession. Each has a core mission of professional paralegal development. Additionally, each organization has developed a voluntary certification exam designed to provide a credential of distinguished competency in the paralegal profession. The competing exams have fueled the debate in the past few years over paralegal licensure.

THE CERTIFICATION PROCESS

Since its incorporation in 1975, NALA has implemented an ethical code and a well-respected national credentialing program known as the Certified Legal Assistant Examination. Successful exam takers are known as Certified Legal Assistants and can sign their name with the designation CLA. The CLA is designed as an entry-level competency exam frequently taken shortly after completion of a sanctioned paralegal training program and prior to actual work experience. For paralegals desiring an even higher level of distinction and excellence, there is NALA's Certified Legal Assistant Specialist Examination.

NFPA, by contrast, developed the Paralegal Advanced Competency Exam (PACE) in 1996. The PACE has a two-tier structure that can only be completed after years of work experience. Successful



reaction from NALA, a consistent opponent to licensure. NALA filed a response to the report with the New Jersey Supreme Court. Both the New Jersey Bar and the ABA also opposed the committee's licensing recommendations. The New Jersey Supreme Court rejected all the major committee recommendations concluding, "pending future evaluations of the profession, the Court has concluded that direct oversight of paralegals is best accomplished through attorney supervision rather than through a Court-directed licensing system."¹³

The State Bar of Wisconsin has also established the Paralegal Practice Task Force to determine whether paralegals should assist in reducing a perceived "unmet legal need" of the public. Unlike in California and New Jersey, however, the Wisconsin model has received the support of the Wisconsin State Bar as well as local paralegal organizations. There are some critical differences between the Wisconsin model and the proposals produced in California and New Jersey.

Following a period of investigation, the task force issued its final report to the Wisconsin State Bar. The regime proposed by the task force focuses on minimum standards of education and a continuing paralegal education process to maintain licensure. Unlike the California and New Jersey proposals, there is no recommendation for the imposition of a mandatory examination. Nor is there a complicated formula regulating the law office context within which paralegals may practice as in the New Jersey scenario. The Wisconsin plan is simple, requiring matriculation from a sanctioned post-secondary paralegal studies program (either an associate's or a bachelor's degree satisfies the minimum educational requirement). There is a

grandfather clause for those paralegals trained on the job. The plan also requires that paralegals complete a specified amount of continuing paralegal education every two years.

On June 28, 2000, the State Bar Board of Governors approved the final report of the task force, subject to two reservations. First, the Wisconsin State Bar reserved full approval of the report until it could ascertain whether the Wisconsin Supreme Court would be willing to exercise jurisdiction over paralegal licensure. Second, the Paralegal Practice Task Force was charged with reviewing its proposed ethics provisions for consistency with other Wisconsin Supreme Court Rules. At the time this article went to print, neither the task force nor the Wisconsin State Bar had resolved these reservations in favor of licensure.

Although Wisconsin's is a simpler and more rational limited licensure model, it likely will be actively resisted by NALA and other paralegal organizations. There is a fear in the anti-licensing camp that once a licensing scheme is established in one state, others will soon follow, dramatically changing the paralegal's professional landscape. Critics point to the lack of a market need for such paralegal licensure regimes. Without a verifiable and unacceptable public risk like the unauthorized practice of law, such schemes have an uphill battle for successful implementation.

* *California Annotated Business & Professional Code*, section 6450.

** Supreme Court of New Jersey, *Administrative Determinations on the Report of the Committee on Paralegal Education and Regulation*, May 18, 1999.

PACE takers are known as Registered Paralegals with the designation "RP" following one's name.

In addition to these nationally developed and administered exams, four states have instituted their own voluntary and "state-specific" certification exams. These include the designations of the California Advanced Specialist, the Certified Florida Legal Assistant, the Board Certified Legal Assistant in Texas, and the Louisiana Certified Paralegal.

CLA AND PACE— ELIGIBILITY AND CONTENT

At present, there are over 10,000 Certified Legal Assistants nationwide. The exam has experienced an overall passage rate of 48 percent.¹³ The more recently developed PACE has an overall pass rate of 84.2 percent, credentialing over 300 Registered Paralegals.¹⁴ Each exam scheme is structured to credential advanced paralegal competency. Only the CLA, however, can be taken without work experience.

To be eligible to sit for the CLA, one of the following must be met:

- Graduation from an ABA approved legal assistant program
- A bachelor's degree in any field of study plus one year work experience as a paralegal
- A high school diploma plus seven years work experience as a paralegal

The CLA exam consists of approximately 1,100 questions and is taken during 11 hours over a two-day period. The seven examination categories include communications (grammar, vocabulary, basic punctu-

ation), ethics (both NALA's Code of Ethics and the ABA Rules of Professional Responsibility), Human Relations and Interviewing Techniques (knowledge of professional contacts with clients, attorneys, and coworkers), Judgment and Analytical Ability (analyzing facts and evidence, a legal research essay, reading comprehension), Legal Research (knowledge of primary state and federal sources of law), Legal Terminology (common legal phrases and terms), Substantive Law (this section is divided into five subparts with each examinee testing on the American legal system and selecting from four other content areas including family law, estate planning, criminal law, litigation, business organizations, bankruptcy, administrative law, and contracts).

By contrast, eligibility for Tier I of the PACE requires two years experience as a working paralegal and a bachelor's degree¹⁵ in paralegal studies or a bachelor's degree plus a paralegal certificate from an institutionally accredited program.¹⁶ NFPA has changed course drastically regarding its proposed bachelor's degree requirement and work experience grandfather period. The bachelor's degree requirement was dropped by NFPA as unnecessarily excluding a significant group of paralegals from their registration process. Tier II of the PACE requires successful completion of Tier I and four years verified work experience as a paralegal. Without a bachelor's degree, six years of legal work experience is required.

The four-hour Tier I PACE consists of 200 questions roughly divided into four areas: administration of client legal matters, development of client legal matters, factual and legal research, and factual

A Day with a Legal ASSISTANT

By Naseem Stecker

On any given weekday, legal assistant Kelly LaGrave might be working on a number of different documents for as many as 15 lawyers. She could be drawing up papers for partnership agreements or mergers, dealing with liquor license applications from clients, or even investigating the assets of companies before a sale. “We’ve had people try to sell dissolved companies before,” LaGrave observes—still, it’s all in a day’s work for the legal assistant.

On a good day, things get done. She talks to clients and prepares documents. On slow days numerous lawyers constantly interrupt her, all wanting her attention. “The question is how to prioritize things to keep the attorneys happy. I work for the whole firm. It’s different for most legal assistants, who just work with a couple of attorneys.”

LaGrave’s workday usually begins between 8 and 9 a.m. and ends around 5:30 to 6 p.m. Employed by the Lansing law firm of Foster, Swift, Collins and Smith P. C. for the last eight years, her areas of expertise are in the fields of business and taxes, corporate and franchise matters, as well as liquor licenses and estate planning. “I have real variety in what I do. I just don’t do the same thing everyday. It’s always something different. Also, I have a lot of client contact, and usually that’s good.”

A legal assistant for 16 years, LaGrave did consider getting a law degree but decided against it because it would “take too much time.” She earned her bachelor’s in International Relations from Michigan State University in 1984. After spending five years in Texas and Arizona, where she also worked as a legal assistant and met her husband Bill, she moved back to be with family in Michigan and accepted the job with her present employer. She has a four-year-old son, David.

Legal assistants work in many different areas of the law and do a good amount of paperwork by filling in forms, contacting state and federal agencies, and investigating and conducting client and witness interviews. The job of the legal assistant evolved from the legal secretary. The legal assistant profession is only 20–30 years old, but practitioners and law firms eager to keep their costs down increasingly seek legal assistant services. Legal assistants

are a profit center for the firm, LaGrave points out. “Our time is billed to the client but we don’t share in the profits of the firm. We can’t be owners because we are not licensed attorneys.”

A recent court ruling on attorney fees also makes it advantageous for firms to employ legal assistants because an award of attorney fees may now include an award for the time and labor of any legal assistant who contributed nonclerical, legal support under the supervision of an attorney.

“Legal assistants are essential in today’s practice of law for bigger firms and for smaller ones too,” said James Jensen Jr., a senior shareholder and corporate and tax lawyer at Foster, Swift, Collins and Smith, where 23 legal assistants are employed. “They are very, very helpful, highly efficient and perform a lot of services more efficiently than the attorneys themselves. We are very pleased with them.”

Jensen, who is LaGrave’s supervisor, says “she is the primary corporate legal assistant—very intelligent, well organized, has excellent computer skills and a very good handle on the type of work she performs. She functions as an attorney would and is hardworking, digging into files. She goes beyond what a legal assistant typically does. She is also very good with clients and [is] very diplomatic.”



Kelly LaGrave at her office in downtown Lansing.

STANT

Very skilled in her chosen profession, LaGrave makes it a priority to share her expertise with others and at the same time to learn all that she can. She is deeply committed to professional development and was the recipient of the Mentor Award from the State Bar of Michigan Legal Assistants Section in September 1998. Currently she is the education chair of the Legal Assistants Section. In this capacity she is organizing a seminar scheduled for May 4th in Grand Rapids. Topics to be covered at the seminar will include legal ethics, landlord tenant law, understanding financial statements, summation, patent law, basic business organizations, and basic intellectual property. LaGrave has also served as treasurer and secretary of the Legal Assistants Section. She is a member of two national legal assistants' organizations and is currently serving as regional director for the National Association of Legal Assistants.

"I enjoy networking and getting a lot of information. The seminars are really helpful. I like that aspect of my job, to be able to get out, do things and meet people in my field," LaGrave said.

Last year, she achieved a longtime personal goal by becoming a Certified Legal Assistant Specialist in Intellectual Property. This is a new and upcoming area for legal assistants to work in, and LaGrave said she finds it very interesting.

Within their ranks, only a small percentage of legal assistants are certified by either of the two national legal assistants associations. A recent Michigan Legal Assistant survey shows that the National Association of Legal Assistants certifies only seven percent of those surveyed legal assistants. Less than one percent of the respondents had PACE certification, the Paralegal Advanced Competency Exam, administered by the National Federation of Paralegal Associations.

Although licensing is not required for legal assistants, it is an issue that is worrisome. "People are concerned about how the profession is going to be licensed and the requirements that will have to be put in place. There is concern particularly from people who have been doing it for a long time. Are they going to be grandfathered in or are they expected to go back to school? A lot of states are looking into this," LaGrave added.

Whatever the outcome, it's clear that the need for competent and knowledgeable legal assistants is a strong one. As their professionalism and contributions continue to be recognized and appreciated, legal assistants like Kelly LaGrave, who show a love of learning and commitment to excellence, will always have a supportive role to play in the daily operations of all law-related workplaces. ♦

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and legal writing. A small percentage of the questions test the applicant's knowledge of law office administration.

In some states, the CLA or Registered Paralegal credential is rewarded with a higher salary and additional professional responsibility. This is not yet the case, however, in Michigan. As noted above,¹⁷ there are only two Registered Paralegals in Michigan. The Year 2000 Survey of Michigan Legal Assistants prepared by Special Counsel and the Legal Assistant Section of the Michigan State Bar indicated that only seven percent of the responding paralegals were CLAs.¹⁸ The law office market does not require certification at present in this state. Despite the lack of interest among hiring attorneys in Michigan, paralegals, however, continue to take and pass the exam at an increasing rate.

Sharon A. Werner, a paralegal with Holnam, Inc., recently achieved the CLA designation despite solid job security. "I took the exam because it was the next logical step in my professional formation," she said. "I knew this credential was not critical for my job, yet after passing, I perceived a new and greater sense of respect from the attorneys I work with." Although Werner prepared for the exam outside of work, Holnam found out about her professional improvement endeavor and reinforced it by paying for the exam and granting her a paid leave to help her prepare. It was a smart business move that has paid off.

The voluntary certification/registration process put into place by the two national paralegal organizations should be supported by Michigan attorneys. These examinations and their attendant training regimes serve to improve the quality and professionalism of legal assistants.

A shift from voluntary certification to state-regulated limited or mandatory licensure, however, should be avoided. To date no proposed limited licensure plan has been adopted by any state.

LIMITED AND MANDATORY LICENSURE

It was not long after the inception of NFPA and NALA (with its early CLA Exam), that there began a restless movement among various state bar organizations and legislatures to concoct a limited licensing apparatus for legal assistants. The fear was that unregulated, some independent paraprofessionals pose a threat to the public in the form of unauthorized practice of law. Since most paralegals work under the supervision of an attorney, there is no credible threat of unauthorized practice of law. Attorneys remain solely responsible for the actions and work product of their paralegals. The licensure debate has cropped up largely around a small group of independent paraprofessionals who have utilized legislation and administrative regulations that expressly allow a narrow scope of legal services to be performed by nonattorneys.¹⁹

Michigan got in on the licensure fad in 1977 with the serious consideration of a bill known as the Legal Assistant Act. This bill proposed to regulate legal assistants through a nine-member commission that would administer a paralegal licensing process. Like the many similar schemes in other states, such as Illinois, California, and New Jersey, this bill never passed into law. Most paralegal organizations oppose such licensing schemes due to their unduly restrictive nature.

In the midst of these licensing movements, the American Bar Association created the Commission on Nonlawyer Practice to look at



four main categories of nonlawyers: pro se litigants, document preparers (also called scriveners), traditional paralegals, and legal technicians.²⁰ In its 1995 report entitled, "Nonlawyer Activity in Law-Related Situations," the commission recommended that the role of the "traditional" paralegal, working under the supervision of an attorney, as well as nonattorneys, working in state administrative agencies, be expanded. On the critical issue of limited licensure, the commission, in Recommendation 6 of the 1995 report, stated that it was up to each individual state to determine whether limited licensure was necessary. In lieu of a strong recommendation in this area, the commission instead established guidelines for states to determine whether their current regulation of nonlawyer activity was sufficient. The primary focus for them was whether nonlawyers posed a public risk. When "there is no serious risk to the consumer even when the nonlawyer's service is poor, then a state may conclude that the activity should be unregulated."²¹

Recent developments in California and New Jersey are instructive as to the uphill battle faced by proponents of paralegal licensure. Wisconsin, on the other hand, appears to be closing in on a form of limited licensure.

CONCLUSION

The scope of legal work for independent paralegals, sometimes known as legal technicians, and other nonlawyers is narrow. This very limited practice area (most often in narrowly defined administrative areas) does not pose a threat to the public. In addition, most states have unauthorized practice of law statutes that protect the public from paraprofessionals who push the boundaries of accepted non-lawyer activity in law-related activities.

Attorney supervision of paralegals is the norm in the profession. Attorney supervision serves to protect the public from the unauthorized practice of law. Despite various limited licensing scenarios, attorneys will continue to bear full responsibility for the administration of legal services to the public.

Paralegals are increasingly regulated through the education process by an emphasis on ABA-approved paralegal education programs. An increase in voluntary certification through nongovernmental organizations such as NALA and NFPA has had a positive overall effect on the profession and serves to provide a modicum of regulation. Finally, the national paralegal organizations have promulgated codes of paralegal ethics that mirror the ABA's Code of Professional Responsibility. For these reasons, it is difficult to make the case for mandatory limited licensure for paralegals. The system works in its present form, thus nothing more need be done. ♦



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FOOTNOTES

1. For purposes of this article, the terms "paralegal" and "legal assistant" are synonyms.
2. Included within the scope of the term "law office" in this article are private corporate counsel, private law firms, municipal corporation counsel, and other government law offices.
3. This formal definition is contained in the *Code of Ethics and Professional Responsibility of the National Association of Legal Assistants, Inc.*, at the "Definition" section.
4. August 1997 Amendment to Article 21.12 of the *ABA By Laws*.
5. This definition is similar to the ABA definition adopted at its 1986 Board of Governors meeting. As noted above, the ABA has streamlined the concept somewhat, while retaining the critical tenet that paralegals perform substantive legal work under attorney supervision.
6. *Missouri v Jenkins*, 491 US 274, 288 n 10; 109 S Ct 2463, 2471-71; 105 L Ed 2d 229 (1989).
7. See, NALA, Response to the Report of the New Jersey Supreme Court Committee on Paralegal Education and Regulation, January 1999, pp. 10-11, note 4, citing *Certification, A NOCA Handbook*, National Organization for Competency Assurance, 1996, p. 3.
8. This estimate is based on a computer database compiled by Professor Robert LeClair, president-elect of the American Association for Paralegal Education and director of the University of Hawaii's Kapiolani Community College Legal Assistant Program.
9. *American Bar Association Guidelines for the Approval of Legal Assistant Programs*, Standing Committee on Legal Assistants. The most recent version of the guidelines became effective in September 1997 following comprehensive revision.
10. *1999 AAfPE Membership Directory*, p. 2.
11. *Id.*
12. Each organization, incorporated in the mid-1970s, has an excellent website with links to their respective affiliates and up-to-date information about the profession and their respective competency examinations. NALA's website can be accessed at www.nala.org. NFPA's website is www.paralegal.org.
13. Lana J. Clark, CLA, "CLA v. PACE, Is There Room in This Profession for Both of These Tests?", 15 *Legal Assistant Today* (July/August 1998), p. 54.
14. *Id.* At the time this article was submitted for publication, NFPA's website listed only two Registered Paralegals in Michigan, both obtaining their credentials in 2000.
15. The PACE "grandparenting period" was scheduled to expire on December 31, 2000 but NFPA removed the bachelor's requirement and extended the grandfather period, apparently indefinitely, at its September 2000 annual business meeting. Legal work experience (4 years) continues to be a substitute for the bachelor's degree educational requirement for Tier I and six years work experience for Tier II.
16. The accrediting body may be the ABA or any of the traditional college accrediting bodies throughout the country such as the North Central Association of Colleges and Schools. This requirement is designed to eliminate exam takers from the ranks of proprietary school graduates as well as paralegal certificate holders earned wholly through distance learning.
17. See footnote 14.
18. *Year 2000 Survey of Michigan Legal Assistants*, p. 5. This survey was sent to all members of the Legal Assistant Section of the State Bar of Michigan and 61 percent responded.
19. The Administrative Procedures Act, 5 USCA 555 (b), allows a person compelled to appear before an administrative agency to be represented by an attorney or if permitted by the agency, by some other qualified representative. The most common examples of this include certified public accountants appearing before the IRS as authorized by 31 CFR 10.3-10.75 (1983) and 20 USC 1242 (1975) and registered agents appearing before United States Patent Office as authorized by 37 CFR 1.341-1.348 (1983).
20. ABA, Commission on Nonlawyer Practice, *Nonlawyer Activity in Law-Related Situations*, at p. xviii, defines a legal technician as a person who provides advice or other substantive legal work to the public with regard to a process in which the law is involved, without the supervision of an attorney.
21. *Id.*, at p. 177, note 21.