

February 16, 2000

Re: *AB 1761 - An Act to Define Paralegals*

Dear Assembly Person:

The National Federation of Paralegal Associations (NFPA) is a non-profit professional organization representing 17,000 members through its 56 member associations in the United States. NFPA's California member associations Sacramento Association of Legal Assistants and San Francisco Paralegal Association have read and join in these comments.

A grass roots organization, NFPA prides itself on the professionalism of its members and its position as a leader in the profession for over 25 years. During our routine legislative search process, your bill AB 1761 came under review by our Vice President and Director of Positions and Issues. NFPA submits the following comments for your consideration.

It is always encouraging when lawmakers take steps to recognize the vital role that paralegals hold in the legal profession. The proper utilization of paralegal services in an expanded role is an important component to the resolution of the issues facing the profession today, such as access to justice, client protection and the delivery of high quality legal services.

AB 1761 is a good framework within which to begin the process of defining the profession of paralegal in the State of California. NFPA hopes that by incorporating the suggestions below, it will be well on its way to becoming the comprehensive legislative act that would serve California's consumers.

1. In defining "paralegal" in 6450 (a), NFPA would suggest changing the term "...who perform tasks under the direction and supervision of an active member of the State Bar of California as defined in Section 6060." to "**performs substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively performed by an active member of the State Bar of California**" and delete the remainder of that sentence. This would more fully describe the duties that paralegals who meet the re-requisites could perform and is taken directly from NFPA's definition of "paralegal" as set forth in our Statement of Issues Affecting the Paralegal Profession, which is annexed hereto as exhibit "A."

2. In the term "utilizing technical information to make an independent decision and recommendation," the words "technical information" is somewhat ambiguous and would benefit from a more detailed description or example. Paralegals are not clerical staff. They use today's technology to perform research, conduct investigations and digest depositions, etc.

3. The requirements set forth in Section (b) of this bill are so encompassing that virtually anyone could become a paralegal. While the bill recognizes the need to define this profession, more stringent criteria is necessary to insure the abilities of those persons wishing to become a paralegal. NFPA's preferred educational criteria is a four-year degree in paralegal studies or a B.A. with a paralegal certificate; NFPA's minimum criteria for entry into the paralegal profession is a two-year degree in paralegal studies or an associate's degree coupled with a paralegal certificate. In either case, NFPA recommends that individuals receiving a paralegal education have a minimum of 24 semester hours or the equivalent of legal specialty courses in order to practice as paralegals.

Section (b)(3) should require the above for entry into the paralegal profession with a grandparenting window to allow current paralegals to forego those requirements for a specified period of time. In any event, allowing attorneys who are active members of the bar to certify a person as able to perform as a paralegal or to undertake ethical training does not insure sufficiency of training or skills to adequately perform the expanded role of a paralegal and should be avoided. Section (b)(4) should be excluded in its entirety.

4. Section (c) would exclude independent paralegals, legal document assistants and unlawful detainer assistants from being called "paralegals." What applies to those independents, Legal Document Assistants (LDAs) or Unlawful Detainer Assistants (UDAs) who possess the pre-requisites outlined above? Under what circumstances may they use the "paralegal" title? It is important that those persons who meet the criteria for both classifications receive guidance from this statute.

5. Several state and federal statutes permit the representation of persons by non-lawyers in various venues (*i.e.*, worker's compensation, social security hearings, medicaid hearings, etc.). Therefore, Section 6451 should require language excepting non-lawyers who perform those activities where same is specifically allowed by statute, case law or court rule. NFPA's definition of paralegal as set forth in Exhibit "A" specifically states that a paralegal may be "employed by a lawyer, law office, governmental agency or other entity and may be authorized by administrative, statutory or court authority to perform this work." The addition of this language would clarify the fact that this bill is not intended to override other statutes where paralegals may perform substantive legal work without attorney supervision.

6. Where reference is made to "direct supervision," NFPA would respectfully submit that same be changed to read "for which an attorney is responsible." This would be more in keeping with the language of the first paragraph wherein it is anticipated that a paralegal would be making independent judgments and recommendations to counsel. The American Bar Association utilizes this language in its definition of a paralegal.

7. Would it be the paralegal's responsibility to insure that the attorney for whom work is being performed is an active member of the Bar, as contemplated in Section 6452? NFPA would also suggest the change from "direct supervision" to "for which an attorney is responsible."

8. The terms contemplated in Section 6453 are clearly not synonymous and are not in keeping with the intent of paragraph 6450(c). An independent paralegal, by tradition, does not work under attorney supervision but, rather, offers typing services and information regarding forms to *pro se* litigants.

9. Paralegals performing tasks for which a lawyer is responsible should be exempt from any prosecution under section 6454 of this bill.

Several issues are not addressed in this legislation, and NFPA would encourage the inclusion of the following:

A. Regulatory Program: How does the State of California intend to keep track of those persons practicing as paralegals pursuant to this section? While certification and registration are two ways in which this might be accomplished, NFPA's preferred form of regulation is licensure. This would insure that the State of California could, in fact, protect the public from those persons falsely claiming to be paralegals.

B. Continuing Legal Education: The bill should contain a requirement setting forth the number of continuing legal education hours each paralegal must obtain each year, with a specific number of hours devoted to ethics. In creating its PACE exam (see paragraph "D" below), NFPA mandates 12 hours CLE credits every two years (at least one hour in ethics) as the minimum number of hours to maintain the RP credential.

C. Code of Ethics: What ethical code will govern paralegals? NFPA has promulgated its Model Code of Professional Responsibility and Guidelines for Enforcement, which is included herein as exhibit "B."

D. Testing Mechanism: It is respectfully submitted that a broad-based competency exam is a worthy component of any regulatory action. NFPA has developed the Paralegal Advanced Competency Examination, a psychometrically valid, broad-based examination created to test the advanced competency of paralegals. The successful test candidate receives the credential of Registered Paralegal (RP) to distinguish his or her achievement and dedication to the profession. NFPA would certainly work with the California legislature in the creation of a statewide module to the PACE exam for testing a California paralegal's knowledge of state specific information.

E. Hourly Billing Rate: It would be critical to the success of this bill to include language that would require law firms to employ well-educated paralegals, assign to them a reasonable hourly billing rate, and require that this rate be billed to the clients of that law firm. In those practice areas where an hourly rate is not utilized, attorneys should be directed to review their "flat rate" to reflect the time expended by paralegals in performing substantive legal tasks contemplated in the "flat rate."

The practice of law is a service business. It is unquestioned that paralegals, properly utilized in substantive legal tasks, play an integral role on the legal services team. In reading the many cases dealing with fee recovery, one can see that courts across the

country view the billing of a paralegal's time as a legitimate cost of the law firm seeking recovery. It is also readily apparent that access to legal services is an issue of paramount importance facing the legal profession today. Therefore, it can be reasonably assumed that attorneys utilizing the services of a paralegal would have increased opportunities to provide high quality legal services at a lesser rate while maintaining the integrity of the law firm, increasing firm revenues, and allowing the attorney to work on the more involved issues of a matter, while assigning substantive legal tasks to paralegals.

F. Disbarred/Suspended Attorneys: NFPA would recommend the inclusion of language that would specifically prohibit disbarred or suspended attorneys from working as paralegals.

NFPA is confident that the inclusion of the modifications and additions suggested above would serve to create legislation that would serve well the residents of the State of California. Our Vice President and Director of Positions and Issues, along with her coordinators and committees, are available to work with you in the redraft of AB 1761. NFPA appreciates the opportunity to be heard on the matter.

Sincerely,

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President
Board Certified Legal Assistant-Family Law
Texas Board of Legal Specialization