



Regulation Wars: Episode I – The Licensing Menace

by

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TABLE OF CONTENTS

Introduction	2
Different Types of Regulation: Registration, Certification, Licensure	2
NALA on Regulation	3
NFPA on Regulation	4
Florida on Regulation	5
Conclusion	5

Introduction

The name of the elephant in the paralegal's room is regulation. There is no escape from it. Whether you are a legal assistant who is just starting out or a seasoned paralegal that has been in the field for many years, regulation is the most critical issue currently facing the profession. It is also the most contentious.

Indeed, the National Association of Legal Assistants, Inc. ("NALA") and the National Federation of Paralegal Associations, Inc. ("NFPA"), arguably the leading associations in the profession, could not be further apart on the issue. NFPA promotes mandatory regulation standards for the profession, while NALA supports voluntary self regulation via certification.

The positions stem from the differing views on the paralegal's role. Is a paralegal someone who solely assists the attorney and is under the attorney's direct supervision, or is the paralegal an independent professional who should have his or her own regulation and oversight?



Different Types of Regulation: Registration, Certification, Licensure

Registration: voluntary or mandatory name listing with an association or agency, requiring education, training and ethical requirements (e.g., the voluntary Florida Registered Paralegal program).

Certification: assessment of specialized skills and knowledge via standardized testing administered by a public agency or private association (e.g., NALA's CP/CLA¹ exam or NFPA's PACE²).

Licensure: requires an individual to meet legislatively mandated qualifications. Florida's definition of licensure for unregulated functions, Florida Statute §11.62(2), states that a) the state will regulate the profession if it is deemed necessary for the public welfare, and b) the entry into the professional shall not be restricted such that it affects the services to the public.

¹ Certified Paralegal/Certified Legal Assistant

² Paralegal Advanced Competency Exam

NALA on Regulation|

In short, NALA supports self regulation through voluntary certification, but opposes licensing. NALA's position regarding mandatory licensure is:



1. There is no need to regulate paralegals because paralegals work under an attorney's direct supervision and attorneys are already regulated by state ethical codes³.
2. Licensure will *increase* the cost of paralegals to the attorneys, therefore increasing the cost of available legal services to the public.
3. Licensure will restrict the growth of the profession in two ways: (1) it will deter current non-paralegals from joining the profession; and, (2) licensure may prevent attorneys from collecting fees for non-certified paralegals.

As an alternative to licensing, NALA argues the best approach is voluntary self regulation through certification, particularly, NALA's certification program: the CP/CLA exam. NALA asserts its program is: (a) more flexible; (b) more responsive to the profession; and (c) establishes standards which licensing is unable to do.

1. More flexible – Because licensing is likely to vary from state to state, a paralegal in one state can't be recognized in another⁴. A certification, however, is recognized in every state.
2. More responsive – Because licensing is meant to protect the public and not the paralegal profession, licensure programs may lack input from the paralegal community. Certification, NALA argues, does have such input.
3. Establishes standards licensing cannot – NALA asserts that legislative licensing requirements set a minimum competency level so that the maximum amount of people can obtain the designation. NALA argues certification has higher standards than those permitted by legislation because certification is not forced to catch as wide a net.

NALA's ultimate position is that certification is the best alternative to mandatory licensing because it has all the benefits of licensing (education standards, competency measurements, ethical rules and disciplinary processes) without the cost and complexity of implementing mandatory schemes.

³ NFPA's proposal provides for some regulatory exemptions to paralegals working under the direct supervision of an attorney,

⁴ NFPA proposes a regulation plan with reciprocity recognition so that paralegals licensed in other states will only need to pass an ethics examination and meet moral character standards.

NFPA on Regulation



NFPA supports a mandatory regulation plan which expands the role and responsibilities of paralegals. NFPA believes that this expansion benefits and protects the public through improved access to affordable legal services.

NFPA believes that, over time, the lines have blurred between lawyer and non-lawyer practice. Prior to implementation of regulation, NFPA states that it is essential to define the tasks performed by paralegals in the various legal specialties so that the line may be drawn more distinctly. NFPA argues that the harm to the public -- in the sense of unauthorized practice of law or other unethical violations -- lies in the public's misconception of the paralegal's role, especially when it comes to paralegals providing services directly to the public. Licensure, mandatory ethical and disciplinary procedures in place would serve to deter non-attorneys from ethical violations because they will be sanctioned and/or have their license suspended or revoked. Additionally, with licensure, those who hold themselves out to be paralegals will be known to be qualified, ethical and educated. Therefore, NFPA recommends the following implementations:

1. A two-tiered mandatory licensing plan, including: (a) **general licensing** where paralegals meet minimum experience, education and continuing education requirements; and (b) **specialty licensing** where paralegals must pass an examination in order to demonstrate expertise in a specialty area of law.
2. Ethical standards that require adherence to rules of professional conduct.
3. Disciplinary standards and methods, including a complaint system in which ethical violations can result in discipline (e.g., reprimand and probation), suspension or revocation, with distinctions between major and minor violations.
4. Educational standards and competency assessment methods that include higher standards for paralegals who provide services directly to the public

In addition, NFPA proposes that ethical rules be re-worded so that attorneys have the *ultimate* responsibility and accountability for paralegal work, versus the "direct supervision" language currently in place.

NFPA sees legal communities moving away from vague conceptions of what a paralegal does to a clearly defined standard which promotes accountability and professionalism across the board in order to meet the legal needs of the public in the form of accessible and affordable services.

Florida on Regulation|

On November 15, 2007, the Florida Supreme Court approved Rule 20 amending the Rules Regulating the Florida Bar and creating a two-tiered voluntary registration system. The designation of a Florida Registered Paralegal (“FRP”) under Rule 20 includes education, certification and/or work experience requirements as well as continuing education, adherence to a code of ethics and disciplinary methods for Florida paralegals.

During the 2006 oral argument on the adoption of Rule 20 (which had been proposed by the Florida Bar in response to the 2005 proposed Paralegal Profession Act -- House Bill 395 and Senate Bill 906), the Florida Bar’s counsel indicated that Rule 20 is “...a positive *first step* in terms of recognizing the professionalism of paralegals out there, and raising the quality of practice of law” (emphasis added).

As it stands today, two years since the March 1, 2008 effective date of Rule 20, there are over 3,000 Florida Registered Paralegals. While mandatory regulation has not been implemented, it is a foreseeable reality in the wake of other states adopting regulation⁵.

Conclusion|

The debate is sure to continue on whether direct supervision by an attorney is sufficient (and mandatory regulation therefore unnecessary) or whether the time has come for uniform standards for the profession. Arguments both for and against mandatory regulation have valid points. Plainly, NFPA and NALA support the advancement of the profession. It may behoove both to open the channels of communication and develop a unified proposal that meets the concerns of each. A compromise should be made for a system that is adaptable while maintaining a visible standard for the profession.

Regardless of a state’s choice between registration programs, voluntary certification or mandatory licensing, there soon will be *some* form of regulation in place. The future *is* regulation.

⁵ Those who have already implemented some form of regulation include California, New Mexico, North Carolina, Ohio and Oklahoma. Arizona and Washington have imposed limitations on the duties of paralegals. States with current or prior proposed regulation include Indiana and Wisconsin (Wisconsin’s Supreme Court recently denied the Paralegal Licensure Petition stating lack of authority to enforce mandatory regulation).