

SFPA Scholarship Competition 2009/2010

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Historically the National Association of Legal Assistants (“NALA”) and the National Federation of Paralegal Associations (NFPA) have been organizations which primary purpose is to promote the advancement of the paralegal profession. For that purpose both organizations have established certain ethical requirements and educational standards for the profession. Since the use of paralegals has increased over the years, various bar associations and state legislatures have proposed various forms of regulation for the paralegal profession that include mandatory licensure and/or certification. Even though NALA and NFPA are both advocates of the paralegal profession, their positions concerning the issue of paralegal regulation are quite different. NALA opposes any kind of mandatory regulation of the paralegal profession whereas NFPA supports a mandatory regulation that broadens the paralegal role and services to the community. They have different opinions as to who is best served by these regulations: the general public or the paralegal profession.

NALA believes that it is the responsibility of individuals to advance himself in their profession and that the paralegal profession should be self-regulated. Therefore, they endorse voluntary certification programs that establish educational requirements and ethical standards for the paralegal profession but as long as they are not mandatory. NALA’s opposition to paralegal regulation stems from their analysis of when it is required to have a governmental body regulate a profession. According to NALA the issues of licensure of a profession rest on two factors: 1) a person’s fundamental right to engage in his or her profession of choice and 2) the protection of the health, welfare and safety of the public. According to NALA it has not been demonstrated that there is a public need to regulate paralegals because most of the paralegals work under a supervision of an attorney, who is ultimately responsible for the work of the paralegal. Therefore, paralegals do not cause direct harm to the public’s health, welfare and safety since they are supervised by attorneys who are already regulated.

In addition, NALA argues that most of the cases of unauthorized practice of law are perpetrated by members of the public who are not paralegals and the regulation of paralegals would have no effect on them. Thus, the regulation of paralegals would not eradicate or necessarily diminish the unauthorized practice of law, which is the underlying rationale for the proposed mandatory regulation of the paralegal profession. Additionally, NALA also argues that there is no need to set mandatory regulations on who can be called a paralegal since there is already case law, Supreme Court rules and model guidelines adopted by the different states that help define the scope of the work and services of a paralegal. They also argue that a mandatory regulation from a governmental body would merely control who enters the profession but it does not establish the standards of the profession. They are created to serve the public and its rules and regulations are developed with the needs of the public in mind and not the needs of the profession, the latter being the main concern by the proponents of the mandatory regulation.

Another reason why NALA opposes mandatory licensing is because they believe that it has nationwide implication for the paralegal profession. Licensure programs are the responsibility of government agencies overseeing the licensure process and such licensing requirements may vary from state to state. Therefore, it may not be easy for a professional licensed in one state to obtain a license in another unless some sort of reciprocity agreement is in place.

Additionally, NALA strongly believes that mandatory regulation of the profession would increase the cost of paralegals to employers which would in turn increase the cost of legal services to the public. Their rationale for this argument is that a mandatory licensing requirement would limit who can enter the profession and thus would limit the amount of people who can perform the paralegal tasks. It is well known that the attorneys have been able to provide more cost-effective legal services because of their ability to hire individuals to perform some of the tasks that an attorney can perform but at a lower rate. This results in a more efficient handling of cases not only from a legal point of view but also from a cost perspective which ultimately translates into a reduction of the costs of the legal services to the client. Otherwise, the attorney would have to charge the client for the hours of research, investigation and the drafting of simple documents that a paralegal can do at a lower rate. It will also enable the attorney to focus on other tasks of a client's case that are more complicated and require the attorney's knowledge of the law instead of spending time on tasks that can be performed by a paraprofessional.

Conversely, NFPA's position on regulation is quite different from NALA's in that they do agree with paralegal regulation as long as it expands the role and responsibilities of the paralegals to enable them to provide legal services directly to the public. The basis for their position is that they have recognized that over the years the practice of law has changed and society has become more aware of their legal rights and better informed about the legal process. As a result, many legal services have become so common and standard that non-lawyers such as accountants, mediators and trust officers have been successfully providing these services to the public for years. NFPA has recognized over the years that the need for legal services is not being met and they believe that non-lawyers and paralegals can play an important role in meeting those needs. They argue that this could be accomplished by having qualified paralegals and non-lawyers assist the public in order to provide them affordable access to justice.

NFPA places great emphasis on protection to the public which they believe should be coupled with non-lawyer competence and accountability. NFPA's strongly supports innovative ways to have paralegals and non-lawyers play a more active role in providing needed legal services to the public as long as adequate protections for the public are in place. As a result, NFPA has been a proponent of regulation of paralegals that would allow the paralegals to perform more tasks than what they are currently allowed to perform. Their recommendations for regulation include a two-tiered licensing plan that is mandatory and any other form of regulation that may be appropriate in a given state such as certification or registration. It also proposes standards for ethics, discipline and education, as well as a method to assess advanced

competency of paralegals. It has also proposed the establishment of a disciplinary process and definition of the tasks that may be performed by paralegals in numerous specialty of law.

Additionally, NFPA argues that the legal profession must recognize its responsibility to provide the public with the opportunity to choose different levels of expertise and cost, depending on the type of services needed. It also believes that the legal profession must strive to provide a greater variety of legal services that would allow more freedom of choice, easier access to professional services for the public and reduced costs.

In essence, the difference between NFPA's position and NALA's is that NFPA places greater emphasis on the public's need for affordable legal services and the role that the paralegal should have in meeting these needs. NALA on the other hand places more weight on an individual's fundamental right to engage in his chosen profession without intervention or regulation from a governmental body as long as the services provided by the profession do not substantially harm or endanger the public's health, welfare and safety. However, both NALA and NFPA agree that there should be voluntary testing for different types of credentials and minimum educational standards for the profession.