

Paralegal Regulation: Is it the Next Step?

By Linda S. Jevahirian

California is the only state that regulates the paralegal occupation.¹ A number of states have considered regulation and/or licensure, and some have instituted voluntary certification.^{2,3} Paralegals in Michigan have not sought out any kind of state or local method of regulation.

Government regulation – the process of licensing an individual to practice a profession – is generally enacted for the protection of the public. Paralegals who prefer this kind of intervention believe, among other things, that standardizing requirements and testing for qualifications will expand the profession. Those opposed to the concept argue that the profession is already regulated by the attorneys for whom the paralegals work, and that the cost of formalized regulation is too high a price to pay for privileges they already retain.

History

Entry into the paralegal career has been inconsistent. The field was initially populated with secretaries who learned the job through experience. As schooling became more prevalent, members of the profession started to question the threshold of its qualifications. Some secretaries furthered their formal education, while others chose not to. The profession has evolved into an eclectic mix of people qualified through a blend of experience and/or education.

In the beginning few schools offered quality programs. In 1975 the American Bar Association developed an approval process for paralegal programs. This increased the availability of improved higher education, which accelerated in the 1980s and continues to do so. A ready supply of individuals with more education and experience paved the way for more complex job qualifications. But educational requirements have not been exclusive.

During the 1970s two national paralegal associations emerged as motherships for local chapters: the National Association of Legal Assistants (NALA) and the National Federation of Paralegal Associations (NFPA). Both associations offer voluntary examinations that involve a high degree of expertise and result in certification that requires continuing education. NALA established testing as a way to self-regulate and further qualify paralegals. They also offer specialized testing that adds an additional credential. NFPA has a test that also acts as a template for states that wish to implement regulation.

State of Michigan

In the absence of government regulation, Michigan has three effective methods that act in concert to define the paralegal profession and classify it as a unique entity.

The Guidelines for the Utilization of Legal Assistant Services define 'legal assistant' for the purpose of membership in the State Bar of Michigan, and include some basic rules of behavior that also apply to other non-lawyer, supervised staff.⁴ The membership criteria holds paralegals to a specific level of education and experience, and has also had an optimistic and constructive influence on the way paralegals are perceived.⁵ The Michigan Rules of Professional Conduct (MRPC) holds paralegals to the same level of ethics as the attorney for whom they work.⁶ Except for the unique mission expressed by the NFPA and the state associations that have expressed an interest in regulation, the schools, associations and practitioners that framed the profession were not necessarily grooming it for state licensure.

Two Associations, Two Sides

The National Federation of Paralegal Associations has been a leader in the discussion about regulation. Their "Model Act for Paralegal Licensure" sets forth, among other things, their convictions on regulation:⁷

- To reduce the cost of legal services by using qualified paralegals
- To standardize performance, and to regulate the title and the work
- To set standards of qualification for training, education and experience
- To expand paralegal duties to include those things that might now be considered the unauthorized practice of law
- To protect the public
- To expand the role of the paralegal
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The National Association of Legal Assistants is against government intervention. In a paper authored by the association, "Issues Related to Licensure and Governmental Regulation of Paralegals," they argue that:⁸

- Paralegals are already regulated by the attorneys for whom they work. Because the public is protected by the attorney's license, the paralegal need not be licensed
- The cost of legal services has already been reduced by the implementation of paralegal services
- The profession has established qualifications for training, education and experience through its schools and associations
- Regulation will not necessarily change the role of the paralegal

What is 'Regulating' the Profession Now?

In the absence of a statute, law or specific code, paralegal qualifications and the role they play are ultimately determined by the attorneys in charge of hiring them. Their employment is based on practice needs, which accounts for attorney discretion in determining who is appropriate for the job. As long as the paralegal is not violating the MRPC, which requires them to act only under the supervision of an attorney, they are considered 'regulated.'

With or without formalized regulation paralegals have already had a significant impact on the cost structure of lawyer services. Whether the cost of legal services would improve as a result of paralegals working independently of lawyer supervision is unknown. **If regulation were legislated in such a way to allow paralegals to work outside the supervision of a lawyer the profession would most probably be reshaped and consideration for public protection would be questioned.** In the meantime, the profession as currently defined does not provide for paralegals who work in this capacity.

There continues to be significant overlap or duplication in offices where secretaries function as legal assistants. Regulation might be one way of distinguishing their roles; however, the distinction between what constitutes paralegal work and what constitutes clerical work has already been determined. The landmark case *Missouri v. Jenkins*⁹ differentiated paralegals from clerical workers when it stated that paralegal fees should be charged at 'market rate' rather than 'at cost' to the lawyer. The Michigan Court Rules are also clear on allowing paralegal fees to be included in attorney fee awards.¹⁰

Conclusion

Regulating the profession would most probably include a series of pre-requisites and a testing mechanism to determine whether a person meets the criteria to perform the tasks associated with being a paralegal. Included would be a license or certificate that would be issued upon successful completion, and then renewed at future increments. Burdening the profession with rules and regulations instituted by a government entity might widen the scope of the profession, but it might also complicate questions about education, experience, title, role, supervision and cost. Whether this is the next step in the evolution of the paralegal profession remains to be seen.

Footnotes

1 California adopted regulation in 2000 that requires persons using the titles "paralegal," "legal assistant," and the like to meet certain educational/experiential qualifications and to meet continuing education requirements. California Business and Professions Code, Sections 6450 through 6456.

2 Certification in this context is distinguished from a Certificate of Completion awarded by a paralegal education program.

3 Paralegal Regulation by State, Updated July 2006, NFPA: paralegals.org/associations/2270/files/REGULATION_CHART_07_06.pdf

4 Guidelines for the Utilization of Legal Assistant Services: michbar.org/legalassistants/pdfs/labrochure.pdf

5 Membership Application: michbar.org/legalassistants/pdfs/SectnApp.pdf

6 MRPC 5.3(b).

7 Model Act for Paralegal Licensure, NFPA: paralegals.org/displaycommon.cfm?an=1&subarticlenbr=341

8 Issues Related to Licensure and Governmental Regulation of Paralegals, NALA: nala.org/News.htm

9 491 U.S. 274 (1989).
10 MCR 2.626.

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