

PARALEGAL

An Argument for the Need to Certify and Legislate Paralegals

BY VALERIE A. DOLAN

Special to the Legal

The use of paralegals in the legal field, no matter if the work venue is a law firm, a corporation or a government entity has significantly changed in the last 30 years. It has now progressed to the point that paralegals want the respect and recognition they deserve in the legal community. They also want regulation and legislation.

Changes in the paralegal profession are ongoing and affect various entities in the legal field on the state and federal levels. The U.S. Department of Labor recently promulgated changes to the rules regarding white collar exceptions to the Fair Labor Standards Act and reaffirmed that paralegals are non-exempt employees. The DOL included a commentary referencing paralegals in its explanatory ruling.

One of the steps that need to be taken in the quest of paralegal regulation will be to define a paralegal. The first state to adopt the definition of "paralegal" and/or "legal document assistant" is California, which set forth a comprehensive definition, practice limitations and educational requirements for paralegals working in that state.

In Montana, meanwhile, Senate Bill 111, which is currently tabled, is designed to amend the definition of who is considered to be practicing law. Paralegals are among the list of those who are considered to be practicing law, whether a fee is charged or not.

The American Bar Association defines paralegals as persons who "work under the supervision of attorneys and are not 'document preparers' working directly with the public." Some states have set forth definitions of "legal document preparers" in order to stop the public's confusion regarding this relatively new term, notifying the public that these individuals are not attorneys and cannot give legal advice. The following are examples of such states that have this definition in place:



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Illinois' Senate Bill 335 created the Legal Document Preparer Act, which provides that, beginning July 1, 2006, no person shall engage in the preparation of legal documents unless the person is certified. It also establishes the Board of Legal Document Preparers and outlines its duties and powers. It provides eligibility requirements for certification, sets out the services that may be provided by a legal document preparer, provides guidelines for the application process and the renewal of certification, provides for disciplinary actions, provides for a code of conduct for legal document preparers, sets out a fee schedule, and amends the State Finance Act to provide for the Legal Document Preparer Fund.

In Arizona, the Legal Document Preparer Program certifies legal document preparers, defining them as certified individuals who prepare or provide legal documents without the supervision of an attorney. Legal document preparers may provide general legal information, but may not give legal advice. Effective July 1, 2003, all individuals and businesses preparing legal documents without the supervision of an attorney in good standing with the state bar of Arizona must be certified pursuant to Rule 31 and the Arizona Code of Judicial Administration Section 7-208.

Arizona's Board of Legal Document Preparers and the Continuing Education Subcommittee has been diligently moving forward with adopting a formal Continuing Education Policy, establishing CE participation guidelines and pre-approving CE events



Las Vegas Mayor Oscar B. Goodman, left, chats with Joseph Kranyak, a paralegal with Schnader Harrison Segal & Lewis and vice president of the Philadelphia Association of Paralegals, at the annual meeting of the National Federation of Paralegal Associations hosted recently by the Nevada city.

The Arizona Code of Judicial Administration Section 7-208 G(4) requires all certified legal document preparers to attend a minimum of 10 hours of board-approved continuing education each year. Board policy requires one of these 10 hours to be ethics-based. For more information, visit www.supreme.state.az.us/cld/dp.html.

Now, the next question becomes who will regulate paralegals? As a part of the decision in *In re Opinion No. 24 of the Committee on the Unauthorized Practice of Law*, the New Jersey Supreme Court established a committee "to study the practice of paralegals and make recommendations" to the court. The Committee on Paralegal Education and Regulation met for the first time in June 1993, and after extensive investigation and discussions it filed its report with the court in June 1998.

The next month, the court released the report to the public and invited comments. Interested parties who responded included members of the public, legislators, attorneys,

paralegals and professional associations. Due to the high level of interest in the subject, the comment period was extended from October 1998 to January 1999. On May 24, 1999, the New Jersey Supreme Court released its "administrative determinations" regarding oversight and regulation of paralegals. The determinations state, "the court has concluded that direct oversight of paralegals is best accomplished through a court-directed licensing system."

The court declined to follow a recommendation by the committee that it establish a regulatory scheme to govern the practice of paralegals. On another point, the determinations state, "The court agrees that the Rules of Professional Conduct [of attorneys] should be modified to describe more comprehensively the obligations imposed on attorneys by their use of paralegals." The court referred the matter to its Professional Responsibility Rules Committee, stating that it "supports in

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The Philadelphia Association of Paralegals Calendar of Events

The Family Law Committee will meet Thursday, May 26, 12:30 p.m., at the offices of Schnader Harrison Segal & Lewis, 1600 Market St. For more information contact Joe Kranyak at jkranyak@schnader.com.

The Intellectual Property Committee will meet Thursday, May 26, 12:30 p.m., at the offices of Fox Rothschild, 20th and Market streets. The topic will be "Trademark Searching? CCH Coresearch" presented by Mark Jacobs. Bring your lunch and ideas. For more information contact Kathy Merlino at 610-270-5896 or by e-mail at marykmerlino@gsk.com.

The Professional Development and Public Relations committees will meet Wednesday, June 1, 12:30 p.m. at the offices of Dechert, 1717 Arch St. 40th floor. Students must R.S.V.P. For more information contact Barbara McBride at 215-496-7357 or by e-mail bag@hanglely.com or Adena Tuckman at 215-994-2859 or by e-mail at adena.tuckman@dechert.com.

A reception sponsored by Legal Images will be held Thursday, June 2, at Elephant & Castle, 1800 Market St., 5:30 to 8:30 p.m. The event is by invitation only. For more information contact Public Relations & Marketing Committee chairwoman Kirsten

Fullerton at McCarter & English at 215-979-3871 or by e-mail at Kfullerton@McCarter.com.

The Newsletter Committee will meet Monday, June 6, at 12:30 p.m., at the offices of Hanglely Aronchick Segal & Pudlin, One Logan Square, 18th & Cherry streets, 27th floor. Bring your lunch and your ideas. All interested members are welcome. For more information contact Christine Hewlett at 215-496-7193 or by e-mail at Chewlett@hanglely.com.

The PAP Board of Directors will meet Monday, June 13, 12:30 p.m. For more information or questions contact Robert Hrouda at 215-567-8300 or by e-mail at rhrouda@feldmanshepherd.com.

The Programs Committee will be meeting Tuesday, June 14, 12:30 p.m., at the offices of Schnader Harrison. For more information contact Kim Bittinger at 215-751-2184 or by e-mail at kbittinger@schander.com.

The Pro/Bono/Community Service Committee will meet Wednesday, June 15, 12:30 to 1:30 p.m., at the offices of Blank Rome, One Logan Square. R.S.V.P. to Judith Bardsley at 215-569-5349 or by e-mail at bardsley@blankrome.com.

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principle the creation and adoption of a Code of Professional Conduct for Paralegals," but prefers that it be adopted "through the efforts of paralegals and attorneys and their respective associations."

In addition, the court, while declining to have court certification of paralegals, encouraged consideration of "the development of an appropriate credentialing system by paralegals, attorneys and their respective associations."

The time and necessity for regulation licensing, certification and education of paralegals has finally come to the front lines. The need for continuing legal education should also be recognized as a necessary step in the process of regulating paralegals. The following are examples of action taking place in

various states around the country:

In North Carolina, during the 2003 term of the 2003-04 legislative session, legislation titled "The Paralegal Profession Act" was introduced. Since the adjournment last year (where the bill died in committee), the Alliance for Paralegal Professional Standards has been working with the North Carolina Bar Association to draft a plan for certification of paralegals. This white paper was unanimously supported by the bar's board of governors (with some minor refinements). On April 22, 2004, the executive committee of the North Carolina state bar accepted the recommendation and voted to move the plan to the full council of the state bar. The plan was adopted July 16 and became effective Oct. 1.

Florida's Senate Bill 2054 was filed March 4, creating the Paralegal Profession Act, which would establish provisions regarding regulation of paralegals legislative intent, definitions, exceptions and exemptions educational

requirements and continuing education requirements. The act provided for a paralegal code of ethics and professional responsibility, a grandfathering clause reciprocity penalties, severability and creation of a Paralegal Regulation Board.

The Wisconsin Supreme Court is now considering a petition by the Wisconsin state bar for licensure of paralegals in the state. The state bar of Wisconsin Paralegal Practice Task Force was created both to address concerns expressed over unmet legal needs and to pursue the state bar of Wisconsin's Commission on the Delivery of Legal Services' recommendation that better utilization of paralegals will help meet some of the legal needs that presently go unserved. The Supreme Court of Wisconsin held a public hearing on the petition Oct. 27 at the state capitol in Madison. An open administrative conference was held on Thursday Dec 16, to discuss Rule 04-03 *In the Matter of the Licensure and Regulation of Paralegals*

With the adoption of paralegal regulation new issues will arise regarding malpractice fees (which are permitted under the landmark case *Missouri et al. v. Jenkins*) and the reality of providing cost effective legal services to the public.

An especially significant issue is educating the public on the differences in legal terminology that exist between their country of origin and the United States — such as the use of the title "notario" — a term that means lawyer in countries such as Mexico and other civil law countries, yet has a totally different meaning here in the United States.

The future of the paralegal profession, as it affects the legal community and the public at large, is under scrutiny from the judiciary. Paralegals in Pennsylvania and the Delaware Valley region are fast becoming pro-active through their national, state and local professional associations, in crafting the future niche of the paralegal in the legal workplace.

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burgeoned to national stature. Greenberg Traurig has a large contingent in its New York office, a key component to its growth strategy. As more clients have consolidated and brought business to the lucrative New York market, law firms see a Big Apple presence as critical to their mission of keeping them. In addition, having a New York office seems to confer a certain status on firms, a kind of "if I can make it there, I'll make it anywhere" phenomenon.

But making it there is not so easy. High

overhead costs and fat salaries cut into revenues. In addition, the capital markets arena is a "tough field to crack," said Reed Smith's Jordan.

Wachtell Lipton and a number of other top Wall Street firms that dominate corporate transactional work year after year can charge top attorney fees and thus keep profits per partner high.

But regional players entering the city appear realistic about the New York market. Reed Smith's approach is to remain focused on real estate investment and make headway into private equity work. Greenberg Traurig, which last week added to its New York office former Fulbright & Jaworski partner Hal

Hirsch, is intent on transactional work with emphasis on reorganization and corporate restructuring.

At least one regional firm that is pushing into the national market rejects the notion that a New York office is essential. Detroit-based Dykema Gossett, which now has 350 attorneys and about 50 lobbyists following its merger last year with Chicago's Rooks Pitts, plans to concentrate on Midwest work instead of the typical approach of looking to the coasts for the biggest money. In addition to several offices throughout Michigan and in Chicago, Dykema also is located in Los Angeles and Washington. Its strategy is heartland growth.

"We believe that there will be a role for a dominant firm to focus on the business needs in the very vibrant commercial centers in the Midwest," said Rex Schlaybaugh, chief executive officer of Dykema Gossett.

Eighteen months after the merger with Rooks Pitts, Schlaybaugh boasts of no defections. He added that the "tremendous pressure" clients are under to cut costs also is helping his firm's business plan.

"We think that pressure fits well with our strategy to be a dominant Midwest-focused law firm," he said.

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U.S. Circuit Court of Appeals and chair of the U.S. Judicial Conference's Security Committee; U.S. Marshal Kim Widup of the Northern District of Illinois; and Chief Magistrate Judge Samuel Alba of the U.S. District Court for the District of Utah.

Roth accused the Marshals Service and the

Justice Department of not being forthcoming on the staffing levels of their marshals.

At this point, the judiciary cannot tell Congress or any other interested party whether the local marshals have enough resources and staff, Roth said. "Furthermore, the [Justice] Department refuses to share any information about Marshals Service staffing levels and formulas or to consider suggestions for change with us."

For the most part, Reyna bypassed Roth's

concerns and testified that the Marshals Service adequately protects the judiciary on a daily basis. But Reyna did say that Congress has not fully funded budget requests for judicial security positions.

Sessions asked few questions of the panel and those he did had little to do with the judiciary's concerns. At one point, Sessions asked about marshals' use of stun belts on criminal defendants. Sessions then pointed out that in a 6-1 ruling in 2002, the California Supreme

Court severely limited the use of stun belts on defendants during trial. The dissenter, he pointed out, was Judge Janice Rogers Brown, President Bush's controversial nominee for the U.S. Court of Appeals for the D.C. Circuit.

"And they blame her for being an extremist," Sessions said. "But maybe we need to review that state court decision."

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campus open for at least 10 years while it develops the State College campus.

More recently, Rendell negotiated an agreement with Penn State that would increase the university's commitment to Carlisle to at least 20 years in exchange for receiving up to \$25 million in state funding for renovating and expanding the Carlisle campus.

The trial is scheduled to last for three days.

— From wire and staff reports.

STATE SUPREME COURT LETS CHILDREN TESTIFY BY VIDEOTAPE

The state Supreme Court ruled that letting children testify by videotape or closed-circuit television does not violate the state constitution.

In a one-sentence order issued Monday, the high court upheld a 3-2 Commonwealth Court decision from September. The lower court rejected arguments by three criminal-defense lawyers that two ballot questions approved overwhelmingly by state voters in November 2003 were legally flawed.

The referendums changed the right of defendants to confront witnesses face to face to a right to "be confronted" with witnesses against them. Voters also gave the Legislature authority to set rules for children to testify outside courtrooms and those rules are now in place.

More than two-thirds of voters agreed that defendants should no longer have the right to see children testify face-to-face. Four out of five voters agreed to let the General Assembly write the rules.

A similar amendment passed in 1995 had been ruled unconstitutional.

— The Associated Press

New Trial

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mind, the judges held.

Hutchinson's attorney had referred to the reports numerous times throughout the trial, Beck noted.

"In all of these remarks, quotations and questions, counsel unmistakably implied that the conclusions of the reports were directly applicable to the Freightliner FLD 120 truck involved in the accident — even though the FLD 120 was not included in the studies that gave rise to the reports and no evidence was presented to show that the models that were included in the studies were substantially similar to the FLD 120," she wrote. "We believe that these studies very likely affected the jury's verdict. Therefore, admission of the reports as evidence was not harmless error."

Hutchinson's lawyer John Bagby of Bagby & Associates in Philadelphia, said he would ask for an en banc reconsideration of the panel's ruling.

"Such a decision not only defies all the

basic principles of relevance under Pennsylvania law but would also immunize manufacturing defendants from a culpable state of mind by precluding the jury from considering what the defendants knew when they knew it and what they did about it," Bagby said.

Defense attorney W. Bourne Ruthrauff of Bennett Bricklin & Saltzberg in Philadelphia — who was assisted at the appellate level by Nancy Winkelman and Dennis Suplee of Schnader Harrison Segal & Lewis — said he and his co-counsel believe the panel's reasoning as to the substantial similarity standard's applicability was consistent with Pennsylvania case precedent.

"We're very pleased with the Superior Court's result and opinion, which in large part affirms Judge Quinones' analysis," Ruthrauff said.

(Copies of the 16-page opinion in Hutchinson v. Penske Truck Leasing Co., PICS No. 05-0764, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.)