

## COMMENTARY

### *Preamble*

The paralegal profession has seen significant and progressive growth since its birth. The history of the paralegal profession shows that it began in the mid-1960s due to the tremendous burdens placed upon the legal system by economic, technological and social changes. These changes forced attorneys to call upon legal secretaries to perform more “paraprofessional” tasks and fewer clerical tasks. Simultaneously, the federal government was using many individuals in a paraprofessional capacity as a result of increased federal programs. The “paralegal” worked under the supervision of the attorney and began to perform duties that, absent the paralegal, the attorney would have performed the work. As the profession evolved, the American Bar Association (“ABA”) recognized it by establishing in 1968 the Special Committee on Lay Assistants (now referred to as the Standing Committee on Legal Assistants). The ABA also established “voluntary” standards for formal education programs. In addition, national paralegal associations were formed, namely the National Association of Legal Assistants, Inc. (“NALA”) and the National Federation of Paralegal Associations, Inc. (“NFPA”), to promote the formal recognition and educational development of the profession. State and local paralegal associations across the country soon were formed establishing similar goals.

Today the paralegal profession continues to mature and expand its duties. Paralegals no longer work just in traditional environments such as law firms and governmental agencies. The profession is expanding into corporate legal departments, paralegal teaching positions, freelance paralegal services, and paralegal management positions. Paralegals are also applying their paralegal skills to other careers. The profession is no longer considered a stepping-stone to law school. Furthermore, the days of paralegals working without formal education are steadily declining.

Although the paralegal profession has gained widespread recognition in the legal community and by the public, it has long suffered from ambiguity. Anyone today can call himself or herself a paralegal and begin working as a paralegal without any formal education and training. As a result, the profession has confronted professional development and unauthorized practice of law issues that have caused a growing national trend towards paralegal regulation in an effort to provide a more unified system.

North Carolina is not immune to this growing national trend. Increased concerns expressed by paralegals and attorneys about possible unauthorized practice of law activities in North Carolina and specific actions taken by both the North Carolina State Bar and the North Carolina Bar Association, combined with a growing national trend towards paralegal regulation issues, compelled several North Carolina paralegal groups to begin studying the issue of paralegal regulation to varying degrees during the mid to late 1990’s.

At the invitation of the North Carolina Paralegal Association, Inc. (“NCPA”), representatives from local paralegal associations, attorney paralegal educators, freelance paralegals, and the Legal Assistants Divisions of the North Carolina Bar Association and the North Carolina Academy of Trial Lawyers met on October 28, 2000, to formally discuss the idea of paralegal regulation in North Carolina. This meeting was the first time a group of North Carolina paralegal leaders and educators had ever assembled to discuss paralegal regulation issues. The representatives from these groups agreed that North Carolina paralegals needed to establish a recognized, professional standard to:

1. Identify the profession;
2. Enhance the professional status of the profession; and
3. Create a unified, regulatory voice for North Carolina paralegals.

The representatives decided it was time to be proactive instead of reactive and, as a result, decided to form a paralegal alliance to accomplish these goals.

The first official meeting of this newly formed alliance was held on February 3, 2001. This historic meeting brought together many dedicated individuals having years of experience in the paralegal field in general, and in specific practice areas in particular, sharing their collective knowledge and experience and, by consensus, creating a forum for the advancement of the paralegal profession in North Carolina. This group became known as the Alliance for Paralegal Professional Standards (“APPS”).

APPS is composed of delegates from paralegal associations, non-traditional (freelance) paralegals, and paralegal educators. The groups, represented in APPS by delegates, are North Carolina Academy of Trial Lawyers Legal Assistants Division, North Carolina Bar Association Legal Assistants Division, North Carolina Paralegal Association, Inc., Raleigh-Wake Paralegal Association, Inc., Metrolina Paralegal Association, freelance paralegals, and paralegal educators.

The mission of APPS is to develop and facilitate implementation of generally acceptable professional standards for the paralegal profession in North Carolina; to advance, foster and promote the paralegal profession in North Carolina; to provide a unified voice to accomplish the mission; and to monitor developments and to collect and disseminate information from any source affecting the mission.

As a part of its mission, APPS studied the following three types of regulation:

1. *Certification* is a voluntary process that is established and administered by a private agency or association. The purpose of certification is to recognize exceptional achievement and maintain an identifiable status within a profession. Some examples of certifications are: Certified Legal Assistant<sup>SM</sup> (“CLA”) through NALA, PACE-Registered Paralegal<sup>SM</sup> (“RP”) through NFPA, Board Certified Civil Trial Advocate through the National Board of Trial Advocacy, National Board Certified Teacher through the

National Board for Professional Teaching Standards, and Certified Pediatric Nurse Practitioner through the National Certification Board of Pediatric Nurse Practitioners and Nurses.

2. *Registration* is a mandatory process that is established and administered by a governmental agency. The purpose of registration is to identify members of a career field. It is the least restrictive type of regulation.
3. *Licensure* is also a mandatory process that is established and administered by a governmental agency. The purpose of licensure is to monitor and control entry into a career field and to protect the public and consumers.

As indicated above, establishing a professional standard for purposes of identification, professional status, and a unified voice brings much needed clarification to the paralegal profession. It is expected that North Carolina paralegals and their employers will be better protected from those who previously claimed to be paralegals with little or no educational qualifications, training or experience in the paralegal profession. It is further expected that through a regulatory process this protection will be transferred to the client of each paralegal's employer as paralegal work product errors or omissions significantly decrease with the increased utilization of regulated professional paralegals.

In order to devise a regulatory scheme for North Carolina, APPS studied research provided by the NCPA Regulation Task Force, along with reports of task forces of other states that had or were considering a professional standard for the paralegal profession through a regulatory process. Almost all proposals studied included some or all of the following regulatory components: (1) Definition of a paralegal, (2) Education and Training, (3) Regulation Based on Experience, (4) Continuing Education, (5) Ineligibility, and (6) Code of Ethics and Professional Responsibility. APPS decided to include all of these regulatory components and to add some of its own.

One of the issues APPS had to explore was the type of regulation needed for the State of North Carolina. It studied the current professional standards for other professions within North Carolina, such as attorneys, dental hygienists, soil scientists, nail technicians, nurses, and substance abuse counselors. Most professions made a provision for testing but did not clearly state a test was in place at the time the statute was passed. For the professions that have statutes, the majority of these professions are licensed and have regulatory boards made up of members of the profession, the public, and, frequently, members appointed by the Governor. After presentations by invited speakers and much discussion, APPS determined if a paralegal wanted to be titled a "paralegal" in this State, they should be regulated. Regulation in the eyes of the State is traditionally licensure as opposed to certification. Voluntary national certification through NALA- the CLA/CLAS designation - and NFPA- the RP designation - will always be an important standard to which to aspire; but APPS needed to focus on regulation of paralegals within this State. APPS concluded that neither "certification" *alone* nor "licensure" *alone*

would be successful concepts of regulation among members of the legal arena and/or the general public within our State; therefore, APPS created a regulatory combination of its own called “registration,” which is a *form* of licensure, but which incorporates the certification process. A Paralegal Regulatory Board is created to oversee and maintain the Act; promote the paralegal profession in the state; research and possibly assist in the development of a test for the future; and generally regulate the paralegals in the State of North Carolina.

**NC GENERAL STATUTES**  
**Chapter 00A Paralegal**

**Sec 00A-1. Title**

**This Chapter may be cited as the Paralegal Profession Act. The purpose of this Act is to increase the level of integrity, competency and performance of paralegals by establishing professional standards.**

## **Sec 00A-2. Paralegal Defined**

- (a) As used in this Act, the term “paralegal” means and includes either of the following:**
- (1) An individual who is qualified under this Act, who is employed or retained by a licensed attorney, law office, governmental agency, or other entity, and who performs substantive legal work for which a licensed attorney is responsible that, absent the paralegal, the licensed attorney would perform the work;**
  - (2) An individual who is qualified under this Act and is authorized by local, state or federal statute or by Rules of Court or administrative rules to represent the public.**
- (b) This Act regulates only an individual described in Subsection (a) above and who shall be titled “paralegal.”**
- (c) No individual shall use the title “paralegal” in this State unless that individual is regulated under this Act.**

### *COMMENTARY*

The regulatory component discussed most extensively among the Alliance for Paralegal Professional Standards (“APPS”) delegates was the paralegal definition.

In early APPS meetings, it became obvious that in order to establish a paralegal professional standard the term “paralegal” must be defined. APPS also had to determine if the term “paralegal” was synonymous with the term “legal assistant.” In an effort to fully understand paralegal definitions and terms used for and by paralegal organizations, APPS studied the definitions of the American Bar Association, North Carolina Bar Association Legal Assistants Division, North Carolina Paralegal Association, Inc. (“NCPA”), *Oran’s Dictionary of the Law*, National Association of Legal Assistants, Inc. (“NALA”), and National Federation of Paralegal Associations, Inc. (“NFPA”). APPS also reviewed articles from professional journals about studies of the issue and discussed definition and term changes recently implemented by NFPA, along with name changes by paralegal organizations in other states.

After much discussion it was determined that these terms carry similar meanings in some paralegal organizations and different meanings in others. For example, NALA generally uses the term legal assistant, but it does recognize and support the terms legal assistant and paralegal being used interchangeably. However, NFPA recently approved paralegal as the preferred term for the use of the profession. APPS also conducted an informal survey among the APPS delegates to determine how the terms were used in their employment and by their respective groups. The informal survey showed a 50/50 split in

the use of the terms. APPS also determined that in North Carolina geography can play a role in whether a person is called a paralegal or a legal assistant. Some employers prefer to use the title of legal assistant and some prefer to use the title of paralegal; however, it was acknowledged that some employers refer to their legal secretaries as legal assistants. Due to these inconsistent practices among employers, it was perceived that there is some confusion in the legal community regarding the use of terms.

In addition to the confusion over the terms paralegal and legal assistant, there is also confusion among members of the legal community between the terms “freelance paralegal” and “independent paralegal.” APPS reviewed the research conducted by the NCPA Regulation Task Force regarding these terms. NCPA’s research showed that “freelance paralegal” is a term used by paralegals who contract their services to lawyers or law firms for a specific matter. The freelance paralegal is not an employee of the lawyer or law firm but is a contractor for a specific project. A freelance paralegal’s services are supervised, reviewed and merged into the contracting lawyer’s final product. “Independent paralegal” is a term used by paralegals who are not supervised by an attorney and whose services are provided to the public under statutes or court and/or administrative rules. It was the consensus of APPS that these definitions were correct, but it was conceded that the legal community as a whole generally does not understand the distinction between these definitions.

In its final analysis, APPS determined that there are four types of paralegal services:

1. Traditional (paralegals who work for an attorney or law firm);
2. Non-traditional (paralegals who work for corporate employers and governmental agencies);
3. Freelance (paralegals who contract services to attorneys); and
4. Independent (paralegals authorized by local, state or federal statute or by Rules of Court or administrative rules to represent the public).

The goal of APPS in defining a paralegal definition in North Carolina was to incorporate all four types of paralegal services.

During the discussion, some APPS delegates expressed concern that if APPS decided to distinguish between the terms paralegal and legal assistant by supporting the use of the term paralegal, that some employers might prefer to use the services of a paralegal but instead call them a legal assistant to avoid having to pay a paralegal salary. APPS also acknowledged that the establishment of paralegal standards might cause an employer to bill clients higher rates for regulated paralegals.

In the end, APPS determined that the terms could be used interchangeably, like attorney and lawyer, but for the purposes of a regulatory process, one term must be chosen over another to distinguish the profession in North Carolina and to avoid any further confusion. As a result, APPS chose the term “paralegal” as the preferred term for paralegals in North Carolina. It was concluded that if an individual wants to be known as a paralegal in the State of North Carolina, then that individual will have to adhere to the definition and qualifications required by the *Paralegal Profession Act*.

The paralegal definition went through a number of revisions prior to the final version. There was a great deal of discussion and debate about whether the word “supervision” should be included in the definition. Many APPS delegates believed that using the term “supervision” was a problem for those paralegals who were not in-house employees of an attorney or law firm and, therefore, not “directly” supervised by attorneys, i.e. freelance or corporate paralegals. Some delegates also believed that the term “accountable” should be included in the definition along with supervision to solve the problem of paralegals not being directly supervised by attorneys. Some delegates believed that paralegals are accountable for the work they do regardless of whether the attorney is also ultimately responsible for their work. In effect, if one wants to be a professional, one needs to be accountable. There were additional concerns about whether the emphasis should be placed on the paralegal’s authority and accountability or on the attorney’s authority and accountability.

Some delegates wanted to include the CLA/CLAS or RP designation as part of the definition. While it was acknowledged that those who have attained the CLA/CLAS or RP designation would probably meet the paralegal definition set out herein, it was discussed that these individuals who qualify to be “paralegals” under this Act could and would use the CLA/CLAS or RP designation as further qualification. It was further discussed and agreed that the CLA/CLAS or RP designation is granted by an independent national organization over which a North Carolina regulatory body has no authority, which could cause future problems for the Paralegal Regulatory Board if those terms were used as part of the definition. Finally, the majority preferred to omit listing any one national paralegal organization within the definition of this proposed Act, except to identify the administrative body responsible for granting of such CLA or RP designations.

APPS delegates also discussed whether it should include the duties of a paralegal in the North Carolina definition. Many delegates raised concerns that being too specific about paralegal duties would exclude many paralegals in the profession and limit the profession’s expansion. In addition, concerns were raised about problems for attorneys collecting fees for paralegal hours if the term was too defined.

All APPS delegates believe the final version of the definition to be the best result of all discussions and research. It includes all the details necessary to describe who a paralegal is without being so detailed as to confine the future growth of the paralegal profession in North Carolina.

### **Sec 00A-3. Education and Training**

- (a) No individual is regulated under this Act unless that individual has successfully completed post-secondary education and training that includes at least 1 of the following:**
- (1) An associate's degree, bachelor's degree, master's degree, or post-baccalaureate certificate from a qualified paralegal studies program; or**
  - (2) An associate's degree or bachelor's degree in any discipline from any institution of post-secondary education which is accredited by an accrediting body recognized by the United States Department of Education; and successful completion of not less than 18 semester credits of coursework, including a legal ethics component, offered by a qualified paralegal studies program, any portion of which may be part of or in addition to the credits earned toward the foregoing degree, in areas as prescribed by the American Bar Association Approval Guidelines for The Approval of Legal Assistant Education Programs.**
- (b) In this Act, "qualified paralegal studies program" means a program of paralegal or legal assistant studies offered by a North Carolina Community College, or approved by the House of Delegates of the American Bar Association, or offers at least 18 semester credits of coursework in paralegal studies and is an institutional member of the Southern Association of Colleges and Schools or other regional accrediting agency.**
- (c) In this Act, "semester credit" means a minimum of 15 contact hours of classroom instruction in a qualified paralegal studies program (50 minutes = 1 contact hour).**
- (d) Coursework that is offered by an institution of post-secondary education as part of a Juris Doctorate program that is approved by the American Bar Association may substitute for the coursework specified in Subsection (a) of this section so long as:**
- (1) Not less than 18 semester credits of coursework is completed with a minimum grade of "C" in each course; and**
  - (2) The content of the coursework meets the categorical criteria specified in Subsection (a) of this section; and**
  - (3) Any coursework or combination of coursework submitted in satisfaction of the litigation or substantive law criteria of Subsection (a)(2) of this section includes instruction in the proper drafting of legal documents used regularly in that area of the law.**

## *COMMENTARY*

Paralegal professional organizations have long recognized that education should be a component of entry into the profession. While nationally there has been a debate as to how the education would be validated, such as testing or the completion of a degree program, the Alliance for Paralegal Professional Standards (“APPS”) determined that in North Carolina a standard course of study should be required of all paralegals.

The requirement should be two-fold: (1) minimum requirements for entry into the profession and (2) continuing education requirements for continued regulation.

To develop educational standards, APPS looked to various standard-setting organizations, namely, the National Association of Legal Assistants, Inc, the National Federation of Paralegal Associations, Inc., the American Association for Paralegal Education, and the American Bar Association (“ABA”). Since the ABA possesses national recognition as setting the standard for quality paralegal education, APPS looked to ABA standards for paralegals regulated in North Carolina.

APPS concluded, however, that requiring graduation from an ABA-approved program could be detrimental to the profession since it might stifle the development of new paralegal programs within the state. A program must be in existence a minimum of two years before applying for ABA approval. Finally, many of the North Carolina Community College programs lack ABA approval because of the cost, yet adhere to a common curriculum with community colleges that are ABA-approved. Instead of requiring ABA-approval, APPS analyzed the ABA guidelines and adopted the ABA’s standard of a minimum of 18 credits of paralegal course work. APPS decided not to specify particular coursework requirements because the need for particular courses may change over time.

APPS recognized that some paralegals hold a four-year degree, along with a paralegal degree or certificate. There are also some paralegals that do not have a four-year degree but have received a two-year associates degree in paralegal studies. It was acknowledged that many metropolitan area law firms require paralegals to have a four-year degree and a paralegal degree or certificate but that many small practitioners and small law firms in rural areas of North Carolina may only require paralegals to have a two-year associates degree in paralegal studies. APPS saw nothing that suggested that a two-year associates degree provided an inadequate educational background for paralegals.

There was some concern that a minimum grade should be stated in Section 00A-3(a) of this Act; however, because of the various grading systems of the paralegal programs, APPS determined that the successful completion (as defined by the school) of a program met the minimum educational requirement. A minimum grade was specified for Section 00A-3(d) because the applicant would not have successfully completed a paralegal program even though he/she would still be eligible to be regulated under this Act.

APPS believes that, in some cases, law school courses would serve as the functional equivalent of the coursework described in Section 00A-3(a) of this Act. Accordingly, Section 00A-3(d) was drafted to permit combinations of law school courses to satisfy the criteria specified in Section 00A-3(a).

#### **Sec. 00A-4. Continuing Education**

**A paralegal regulated under this Act must complete continuing education. The required number of hours shall be established and approved by the Board but shall be no less than 6 hours per year.**

#### *COMMENTARY*

The Alliance for Paralegal Professional Standards (“APPS”) determined that since education was a mandatory requirement for use of the term paralegal once the grandfathering period had expired, a continuing legal education (“CLE”) requirement for continued use of the title paralegal should also be mandatory.

To determine an appropriate continuing educational requirement, APPS examined the continuing education requirements for attorneys licensed to practice in North Carolina. APPS recognized that it was preferable to require paralegals to receive an amount of continuing education equal to that of North Carolina attorneys; however, due to financial and geographical restraints on some North Carolina paralegals, it was decided that the required number of hours initially should be less than those required of attorneys. It was determined that the Paralegal Regulation Board (“Board”) will have the power in the future to increase the number of required CLE hours if it is deemed appropriate.

APPS therefore adopted a minimum requirement of six hours of CLE per year with the provision that the Board will set the requirement for the exact number of hours. APPS also determined that six hours of CLE would not create undue hardship and would enable paralegals to obtain the credits by attending a full-day seminar on a yearly basis.

**Sec. 00A-5. Regulation Based on Experience**

- (a) In addition to those who are qualified to be regulated under Section 00A-3, an individual is qualified to be regulated under this Act if:**
- (1) The individual has a high school diploma or equivalent education at the time of application; and**
  - (2) The individual has been engaged in work as a paralegal for not less than 4800 hours at any time during the 5 years immediately preceding the time of application; and**
  - (3) The individual has completed at least 3 hours of approved continuing education in the area of legal ethics and professional responsibility during the 12 months preceding the time of application; and**
  - (4) The individual makes application for regulation under this section within 3 years after the effective date of this Act.**
- (b) The work experience required in Subsection (a)(2) above shall be documented by the certification of an attorney, law office, governmental agency, or other entity, or by the records of regularly conducted activity. The Paralegal Regulation Board shall prescribe the form and content of the certification or records.**
- (c) An applicant who has the Certified Legal Assistant<sup>SM</sup> (“CLA”), PACE - Registered Paralegal<sup>SM</sup> (“RP”) or other national paralegal credential approved by the Paralegal Regulation Board may present evidence of good standing as compliance with the requirements of Subsection (a)(1) through (a)(3).**

*COMMENTARY*

From the outset of discussions, the delegates of the Alliance for Paralegal Professional Standards (“APPS”) unanimously agreed that the *Paralegal Profession Act* must include a provision, commonly known as the “grandfather clause,” for the inclusion of as many paralegals as possible who currently practice in North Carolina. The delegates recognized that many practicing paralegals have obtained their professional experience by on-the-job training. The delegates also recognized that paralegal education programs once were not as geographically diverse as they are today and distance was often a factor in the ability of a person to attend a paralegal education program. Consequently, APPS agreed that paralegals who do not meet the educational requirements for regulation under Section 00A-3 may qualify as paralegals under this Act if they meet minimum education, work experience, and continuing education requirements.

APPS believes that in keeping with the purpose of the Paralegal Profession Act of “increas[ing] the level of integrity, competency, and performance of paralegals” there still needs to be a minimum educational requirement of a high school diploma or its equivalent. In addition, there needs to be a minimum amount of work experience as a

paralegal. APPS recognizes that not all paralegals work full-time and some paralegals have periods of non-work due to personal obligations. It was determined that 4800 hours over a five-year period would allow the greatest latitude in this area. Finally, and most importantly, APPS recognizes that public trust and confidence in paralegals was the paramount consideration and all paralegals needed to have some formal education in ethics.

A “sunset provision” was agreed upon by APPS in order to require the mandatory formal education as detailed in Section 00A-3 for future paralegals. A three-year window of opportunity is an appropriate length of time in which to make the paralegal profession in North Carolina aware of the “grandfather clause” and allow all paralegals who wish to qualify under the provision the opportunity to do so.

One of the issues that created lengthy discussions was whether to include the Certified Legal Assistant (“CLA/CLAS”) or PACE-Registered Paralegal (“RP”) designation as a method of grandfathering. While the delegates of APPS recognized the value of these voluntary designations, they also recognized that it was important to separate a state regulatory scheme from any national organization. It was noted there are a number of other professions who have state licensure as well as a voluntary national certification. This additional certification enhances their credentials and professionalism.

The second issue regarding the grandfathering component revolved around the way in which paralegal experience would be documented. The delegates agreed that in addition to employer certification, individuals could apply under this “grandfather clause” if “the records of a regularly conducted activity” could document their work experience. This language was adopted to allow freelance and non-traditional paralegals to apply under this section who may not be able to obtain an employer certification.

There was also discussion of the CLA/CLAS or RP credential as an alternative method of documenting the requirements of this section. APPS concluded that an applicant who has the CLA/CLAS or RP has already satisfied minimum eligibility requirements for the taking of such exams; therefore, evidence of good standing is deemed as compliance with the requirements of Subsection (a). APPS included the possibility of other national voluntary designations, which may include similar requirements and credentialing as the CLA/CLAS or RP, that could also be submitted to the Paralegal Regulation Board for consideration as evidence of the education requirements of this section.

**Sec. 00A-6. Reciprocity**

**Other individuals may qualify under this Act by Rules of Reciprocity as established by the Board.**

*COMMENTARY*

The Alliance for Paralegal Professional Standards believes that in the future many states will institute regulation of paralegals. There needs to be a method for reciprocity for paralegals entering North Carolina from other states. As is common in a number of other professions, paralegals regulated in other jurisdictions will be qualified under this Act if they meet the guidelines established by the Paralegal Regulation Board.

## **Sec. 00A-7. Ineligibility**

**Sections 00A-3 and 00A-5 notwithstanding, no individual may identify oneself as a paralegal or apply to be regulated under this Act if:**

- (a) The individual's regulation as a paralegal in any state is under suspension or revocation; or**
- (b) The individual's license to practice law in any state is under suspension or revocation; or**
- (c) The individual has been convicted of a felony or any crime involving moral turpitude; or**
- (d) The individual is not a legal resident of the United States.**

### *COMMENTARY*

The stated purpose for the formation and implementation of the Paralegal Profession Act was, and continues to be, to “increase the level of integrity, competency, and performance of paralegals.” With this purpose in mind, the Alliance for Paralegal Professional Standards (“APPS”) concluded that standards for use of the title paralegal were important and formed a number of separate committees to address those standards. During these discussions it was also agreed that there needed to be requirements for exclusion from ever qualifying to use the title “paralegal.”

The title “paralegal” should not be available to persons whose license to practice law is under suspension or revocation. The North Carolina Paralegal Code of Ethics and Professional Responsibility as developed by APPS closely parallels the rules of professional conduct for attorneys; therefore, APPS believes persons under professional discipline for failure to adhere to similar, if not identical, standards of conduct should not have access to the title “paralegal” as either a temporary or permanent career choice. For the same reasons, APPS believes that in the future other states will regulate paralegals and a paralegal whose regulation is under suspension or revocation in another state should similarly be prevented from using the title “paralegal” in North Carolina.

Additionally, APPS believes that public trust and confidence in the honesty and fidelity of paralegals is a paramount consideration and any person convicted of a felony or other crime involving moral turpitude should be excluded from using the title paralegal. Finally, as only legal residents of the United States can be employed in our country, illegal residents should also be excluded from using the title paralegal.

**Sec. 00A-8. Paralegal Regulation Board Established; Members; Terms; Vacancies; Meetings**

- (a) The Paralegal Regulation Board (the “Board”) is hereby established to administer the provisions of this Act.**
- (b) The Board shall consist of not less than 17 members who are residents of this State and who are appointed or elected as follows:**

  - (1) 12 members shall be individuals who are regulated under this Act and shall be appointed by the Alliance for Paralegal Professional Standards. The initial Board shall include 4 paralegal members, each of whom shall serve a one-year term, 4 paralegal members each of whom shall serve a two-year term, and 4 paralegal members each of whom shall serve a three-year term. Paralegal members of the Board may serve for 1 consecutive term of 3 years. After the end of the fourth year from the effective date of the creation of this Board, paralegal members of the Board shall have been elected by the individuals regulated under this Act for three-year terms, in a manner determined by the Board which will give consideration to geographical representation and will promote diversity of the profession on the Board. No elected paralegal member of the Board may serve more than 2 consecutive terms.**
  - (2) 3 members shall be directors of paralegal education programs (“paralegal educators”). The appointments shall be made from a list of paralegal educators in this State by a majority vote of the paralegal members on the Board. The initial Board shall include 1 paralegal educator who shall serve a one-year term, 1 paralegal educator who shall serve a two-year term, and 1 paralegal educator who shall serve a three-year term. After the end of the first year from the effective date of the creation of the Board, a paralegal educator member of the Board shall serve for a three-year term or until his or her successor shall be appointed.**
  - (3) 2 members shall be attorneys licensed to practice law in this State. The Chief Justice of the North Carolina Supreme Court shall make such appointments from a list provided by the North Carolina State Bar. The initial Board shall include 1 attorney member who shall serve a two-year term and 1 attorney member who shall serve a three-year term. After the end of the second year from the effective date of the creation of the Board, an attorney member of the Board shall serve for 1 three-year term or until his or her successor shall be appointed.**

- (c) Each member of the Board shall take an oath for the faithful performance of his or her duties and shall serve without bond.**
- (d) Except for attorney Board members, vacancies on the Board for any reason occurring during a term shall be filled by appointment of the entire Board.**
- (e) A Board member may be removed by 2/3 vote of the Board for misconduct, incompetence, or neglect.**
- (f) The Board shall adopt rules and procedures to govern its proceedings.**
- (g) The Board shall elect a chair, vice chair, and such other officers from among its members as it deems necessary in order to perform its duties. Such officers shall serve terms and have duties as may be prescribed in the rules and procedures adopted by the Board.**
- (h) Unless otherwise set by statute, the Board shall have the authority to set compensation and reimbursement for expenses incurred by its members in their performance of duties required by this Act.**
- (i) The Board shall meet at least annually and at other times as may be provided for in the rules and procedures adopted by the Board.**

#### *COMMENTARY*

If paralegals are to effectively govern themselves in our State, a regulation Board must be created and given statutory powers. The Alliance for Paralegal Professional Standards (“APPS”) decided it would be best for paralegals to be the majority on the Regulation Board. The Board will be a separate entity from the North Carolina Paralegal Association, Inc. (“NCPA”), North Carolina Bar Association (“NCBA”), North Carolina State Bar, North Carolina Academy of Trial Lawyers (“NCATL”), or any other group in the State or nation. The Board will not be associated with any group and will therefore remain neutral with one goal in mind, to regulate those who wish to be titled a paralegal in the State of North Carolina. The Board will be funded through application fees.

There was much discussion and debate regarding the size of the Board, its members (paralegals, educators, and attorneys), how these members would be chosen and their terms. Discussion included whether some or all of the APPS delegates should serve as the original Board. APPS decided on an initial Board of 17 members.

APPS decided that 12 of the 17 will be composed of two paralegal members of each of the groups who are members of APPS and will be initially appointed to serve one-year to three-year staggered terms. As these Board members complete their terms, the initial Board’s representation scheme will be in place for the regulated paralegals in the state to elect their respective representatives. APPS determined that it is important to have Board

members be representative of all North Carolina regulated paralegals and therefore the election method as determined by the Board will give consideration to geographical area and will promote diversity of practice areas.

In addition to the paralegal Board members, the majority of APPS delegates determined that it is important to have three paralegal educators as voting members of the Board. It was generally discussed whether paralegal educators should serve in an advisory capacity rather than as voting members of the Board.

In addition, APPS determined that two North Carolina licensed attorneys should be part of the Board and that the Chief Justice of the Supreme Court would appoint these two attorney positions.

## **Sec. 00A-9. Powers of the Board**

**The Board is hereby vested with the authority and is charged with the duty of administering the provisions of this Act including, but not limited to, the power to:**

- (a) Promulgate rules and procedures necessary to carry out and administer the provisions of this Act, including the authority to require the submission of reports and information by individuals regulated under this Act.**
- (b) Develop or approve the form for application for regulation under this Act and establish fees for application for regulation, including initial, provisional, and renewal applications, application for examination, and for any other services provided by the Board.**
- (c) Approve individual applicants to be regulated under this Act.**
- (d) Develop, administer, and require written and/or oral examination of applicants under this Act.**
- (e) Determine minimum requirements for and approve educational curricula for continuing education requirements for individuals regulated under this Act.**
- (f) Approve providers of continuing education for individuals regulated under this Act.**
- (g) Cooperate with and assist the directors or administrators of any program designed to educate and train paralegals in this State in any manner determined to be appropriate by the Board.**
- (h) Establish methods to monitor and enforce compliance with the provisions of this Act, including, but not limited to, conducting investigations and holding hearings regarding alleged infractions.**
- (i) Take any action necessary for the collection, disbursement, and maintenance of funds to which it is entitled under the provisions of this Act.**
- (j) Unless otherwise provided by statute, the Board shall have the authority to employ or otherwise retain any entity or individual, including consultants, lobbyists, or attorneys, and to do any other act or thing necessary, in the Board's discretion, to seek legislative action to amend the provisions of this Act.**
- (k) Create the position of Administrator of the Paralegal Regulation Board. Such position shall be filled by appointment of the Board and may be part-time or full-time. The Administrator's duties shall be to administer the**

**directives contained in this Act and the rules and procedures promulgated by the Board and to otherwise carry out the administrative duties incident to the functioning of the Board. The Administrator shall serve with bond or shall carry appropriate professional liability insurance as determined by the Board.**

- (l) Conduct, engage in, and transact any and all lawful business for the administration of the provisions of this Act, including, but not limited to, the purchase or rental of office space, equipment, and supplies, and to sign any and all contracts or other instruments necessary to carry out the powers and authority of the Board granted in this Act.**
- (m) Prepare an annual report of the Board’s activities and to make the same available to each individual regulated under this Act within 120 days after the end of the fiscal year.**

*COMMENTARY*

In order to govern and carry out the enforcement of the Act, the Paralegal Regulation Board requires specific powers to regulate the paralegals of the State. The Board must function as an autonomous legal entity, standing on its own and not governed by other paralegal or bar associations in the State or nation.

The Board is given the power to promulgate rules and procedures to carry out the Act, such as developing the application, approving applicants, determining minimum continuing legal education requirements, and such other powers that are normally given to regulatory boards.

The Alliance for Paralegal Professional Standards (“APPS”) acknowledges that many opinions exist regarding the Board’s power to develop, administer, and require written and/or oral examination of paralegal applicants. This power is included without any specific preference or determination by APPS as to how, when, or if the power will be exercised. Based on its research, APPS found that most regulated professions in North Carolina require applicants to pass an examination as part of the professions’ regulatory requirements.

## **Sec. 00A-10. Ethical Guidelines**

**A paralegal regulated under this Act shall comply with the North Carolina Paralegal Code of Ethics and Professional Responsibility and the companion Rules for Enforcement of this Code, which shall be established and approved by the Board.**

### *COMMENTARY*

The Alliance for Paralegal Professional Standards (“APPS”) determined that ethical guidelines and rules to enforce those guidelines were critical components of paralegal regulation. Paralegals should be required to perform their duties ethically in the same manner as required by North Carolina attorneys. The North Carolina Code of Ethics and Professional Responsibility (“Code”) and the companion Rules for Enforcement were drafted by APPS along with the Act. APPS believes that while the Code itself should not be included in the Act, a requirement for adherence to the Code must be included in the Act.

## **Sec. 00A-11. Violation**

**Any person who violates the provisions of Section 00A-2 shall be guilty of an infraction for the first violation, which shall be punishable by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500) or imprisonment not to exceed 6 months or both in the discretion of the court, and shall be guilty of a misdemeanor for any subsequent violation, which shall be punishable by a fine not to exceed Five Thousand Dollars (\$5,000) or imprisonment not to exceed 1 year or both, in the discretion of the court.**

### *COMMENTARY*

While drafting the Rules for Enforcement of the Code of Ethics, The Alliance for Paralegal Professional Standards (“APPS”) determined that in addition to those Rules, there needed to be sanctions contained within the Act itself. The committee believed that without sanctions, there would be no consequences for violating the Code. It was therefore determined that a fine and/or imprisonment would be an appropriate deterrent for potential violations with an increasing punishment for subsequent violations.

**Sec. 00A-12. Severability**

**If any provision of this Act or the application thereof to any individual or circumstances is for any reason held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.**