

Council Proposes Plan for Certification of Paralegals

BY J. MICHAEL BOOE, CHAIR, LEGISLATIVE STUDY COMMITTEE ON PARALEGAL REGULATION

During the 1990's, many paralegals in North Carolina became frustrated with the perceived ambiguity between the widespread recognition of the profession in the legal community and by the public, and the fact that anyone could call himself or herself a paralegal without any formal education or training. In addition, paralegals began to confront the professional development and unauthorized practice of law issues which had led some other jurisdictions to undertake to define the role of paralegals and to regulate the services that paralegals provide.

In February 2001, after some paralegal organizations had spent five years researching paralegal regulation issues, conducting educational meetings on paralegal regulation, and polling paralegals across the state on their opinions involving such regulation, the Alliance for Paralegal Professional Standards ("APPS") was formed. [SEE SIDEBAR on page 42]. An ad hoc organization, APPS' stated purpose was to identify the paralegal profession, to enhance the status of the profession, and to create a unified regulatory voice for North Carolina paralegals. APPS recognized that attorney participation in the process was not only desirable but also necessary, and in June 2001, it invited the State Bar to participate in its deliberations. At the time, the State Bar was reluctant to participate because regulatory authority for paralegals was not expressly delegated to it by the General Assembly and there was no demand from lawyers to seek such authority. Without the involvement of the State Bar, APPS pressed forward.

By the fall of 2002, APPS had revised its goals to be (1) to enhance the quality of legal services provided to the general public by establishing minimum standards for North Carolina paralegals; (2) to facilitate the employment of paralegals by North Carolina attorneys by ensuring that prospective paralegal employees meet minimum standards; and

(3) to enhance the paralegal profession in North Carolina. As a result of the efforts of APPS, Senator Tony Rand, with the co-sponsorship of Representative Rick Glazer, introduced in April 2003 the Paralegal Professional Act (the bill). The bill resembled an act proposed by APPS, but it contained material revisions inserted by the bill drafting staff of the General Assembly. Fundamentally, the bill was a titling act; that is, it prohibited anyone in North Carolina from using the designation "paralegal" unless the person met certain educational or experiential qualifications. The bill also established an independent, 19-member North Carolina Paralegal Regulation Board to oversee the program. The bill did not, however, prohibit non-lawyers who were not "paralegals" from performing any task assigned to them by a supervising lawyer.

At its April 2003 meeting, the Emerging Issues and Legislative Committees of the State Bar Council voted to oppose the bill, principally because the definition of "paralegal" contained in the bill appeared to embrace virtually all non-lawyers employed in law offices and because there appeared to be little justification for the creation of a new regulatory agency for service providers who are obligated to act under the supervision of licensed and regulated lawyers. Upon learning that the State Bar opposed the bill, APPS asked the sponsors of the bill to suspend activity. Subsequently, APPS made a presentation to a joint meeting of the Emerging Issues and Legislative Committees in July 2003, at which it urged the State Bar Council to support the bill in some revised form. As a result of that meeting, Jim Dorsett, then president of the State Bar, appointed the Legislative Study Committee on Paralegal Regulation as a subcommittee of the Legislative Committee ("subcommittee"). The subcommittee's charge was to work with APPS and its constituent groups with the goal of finding a compromise that could be supported by both the paralegals and the State

Bar Council.

The subcommittee met with the constituent paralegal groups for the first time on October 1, 2003. After considerable discussion, the subcommittee rejected the concept of regulating the use of the title "paralegal" and also rejected a proposal to license and regulate paralegals. It agreed, instead, to pursue a plan to establish minimum standards for voluntary designation of qualified individuals as "board certified paralegals" while invoking as little legislative change as possible.

With those goals in mind, the subcommittee drafted a plan for paralegal certification modeled loosely on the State Bar's Plan of Legal Specialization to be added as a new section of the Rules and Regulations of the State Bar. Like specialization, paralegal certification is wholly voluntary. Unlike specialization, however, initial paralegal certification is intended to be broadly inclusive by establishing a minimum level of education and experience in order to be designated a "board certified paralegal," and requiring a minimum level of continuing education to maintain certification. The subcommittee also proposed amending Chapter 84 to authorize the State Bar to create and enforce such a program.¹ At the April meeting of the council, the proposed rules for the Plan for Certification of Paralegals were approved for publication by a unanimous vote.

The subcommittee, the Legislative Committee, the State Bar Council, and all of the constituent paralegal groups believe that the Plan for Certification of Paralegals strikes an appropriate balance between the interests of paralegals, the interests of the Bar, and the interests of the public. First, it's totally voluntary. Second, it does not seek to differentiate services that can be performed by certified paralegals, non-certified paralegals, or other non-lawyer employees in a law office. Third, it provides an incentive to paralegals to meet the educational and experiential qualifica-

tions for initial certification, and to participate in annual continuing education to maintain certification. Fourth, after the initial two-year alternative qualification period, it requires an examination as a prerequisite to certification to ensure that certified paralegals have a fundamental understanding of North Carolina statutes, practices, and ethical considerations. Fifth, it will be a self-funding program administered under the auspices of the North Carolina State Bar by a board appointed and supervised by the State Bar Council. Finally, it will benefit the general public by enhancing the knowledge and skills of the paralegals who support lawyers who, in turn, provide legal services to the citizens of this State.

Endnote

1. The proposed amendment of G.S. 84-23 (Powers of Council) will give the council the authority to take actions to ensure the competency of the non-lawyer assistants of lawyers. The proposed amendment of G.S. 84-37 (State Bar may investigate and enjoin unauthorized practice) will authorize the State Bar to enjoin the unauthorized use of the "certified paralegal" designation. Legislation to amend these statutes will be introduced in the General Assembly this summer. The rules for paralegal certification will not be finally adopted by the council and submitted to the Supreme Court for approval until the statutes are amended.

Rules of the North Carolina State Bar

27 N.C. Administrative Code

Subchapter 1G: Paralegal Regulation Section

.0100 The Plan for Certification of Paralegals

.0101 Purpose

The purpose of this plan for certification of paralegals (plan) is to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer, and including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public; and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification.

.0102 Jurisdiction: Authority

The council of the North Carolina State Bar (the council) with the approval of the

Supreme Court of North Carolina hereby establishes the Board of Paralegal Certification (board), which board shall have jurisdiction over the certification of paralegals in North Carolina.

.0103 Operational Responsibility

The responsibility for operating the paralegal certification program rests with the board, subject to the statutes governing the practice of law, the authority of the council, and the rules of governance of the board.

.0104 Size and Composition of Board

The board shall have nine members, five of whom must be lawyers in good standing and authorized to practice law in the state of North Carolina. One of the members who is a lawyer shall be a program director at a qualified paralegal studies program. Four members of the board shall be paralegals certified under the plan provided, however, that the paralegals appointed to the inaugural board shall be exempt from this requirement during their initial and successive terms.

.0105 Appointment of Members; When; Removal

(a) Appointment. The council shall appoint the members of the board, provided, however, after the appointment of the initial members of the board, each paralegal member shall thereafter be selected by the council from two nominees determined by a vote by mail of all active certified paralegals in an election conducted by the board.

(b) Procedure for nomination by mail. At least 30 days prior to a meeting of the council at which one or more paralegal members of the board are subject to appointment for a full three year term, a notice shall be mailed to all active certified paralegals at each certified paralegal's address of record on file with the North Carolina State Bar. The notice shall state how many paralegal positions on the board are subject to appointment, state that nominees will be selected by means of written ballots distributed to and returned by certified paralegals by mail, and identify how, by when, and to whom nominations may be made. The board shall mail a ballot to each active certified paralegal at the certified paralegal's address of record on file with the North Carolina State Bar. The ballot shall be accompanied by written instructions and state when and where the ballot should be returned. Each ballot shall be sequentially numbered with a

red identifying numeral in the upper right hand corner of the ballot. The board shall maintain appropriate records respecting how many ballots were mailed to prospective voters in each election as well as how many ballots are returned. Only original ballots will be accepted. The names of the two nominees receiving the most votes for each open paralegal position shall be forwarded to the council.

(c) Time of Appointment. The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually at the quarterly meeting of the council occurring on the anniversary of the appointment of the initial board.

(d) Vacancies. Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the council, subject to the requirements of Rule .0105(a)1, at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

(e) Removal. Any member of the board may be removed at any time by an affirmative vote of a majority of the members of the council in session at a regularly called meeting.

.0106 Term of Office

Subject to Rule .0107 of this subchapter, each member of the board shall serve for a term of three years beginning as of the first day of the month following the date on which the council appoints the member.

.0107 Staggered Terms

The members of the board shall be appointed to staggered terms such that three members are appointed in each year. Of the initial board, three members (one lawyer and two paralegals) shall be appointed to terms of one year; three members (two lawyers and one paralegal) shall be appointed to terms of two years; and three members (two lawyers and one paralegal) shall be appointed to terms of three years. Thereafter, three members (lawyers or paralegals as necessary to fill expired terms) shall be appointed in each year for full three year terms.

.0108 Succession

Each member of the board shall be entitled to serve for one full three-year term and to succeed himself or herself for one addition-

al three-year term. Thereafter, no person may be reappointed without having been off of the board for at least three years.

.0109 Appointment of Chairperson

The council shall appoint the chairperson of the board from among the lawyer members of the board. The term of the chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

.0110 Appointment of Vice-Chairperson

The council shall appoint the vice-chairperson of the board from among the members of the board. The term of the vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during his or her tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the board.

.0111 Source of Funds

Funding for the program carried out by the board shall come from such application fees, examination fees, annual fees, or recertification fees as the board, with the approval of the council, may establish.

.0112 Fiscal Responsibility

All funds of the board shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(a) Maintenance of Accounts: Audit - The North Carolina State Bar shall maintain a separate account for funds of the board such that such funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(b) Investment Criteria - The funds of the board shall be handled, invested, and reinvested in accordance with investment policies adopted by the council for the handling of dues, rents, and other revenues received by the North Carolina State Bar in carrying out its official duties.

(c) Disbursement - Disbursement of funds of the board shall be made by or under the

direction of the secretary-treasurer of the North Carolina State Bar.

.0113 Meetings

The board by resolution may set regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson. Notice of meeting shall be given at least one day prior to the meeting by mail, electronic mail, telegram, facsimile transmission, or telephone. A quorum of the board for conducting its official business shall be five or more of the members serving at the time of the meeting.

.0114 Annual Report

The board shall prepare a report of its activities for the preceding year and shall present the same at the annual meeting of the council.

.0115 Powers and Duties of the Board

Subject to the general jurisdiction of the council and the North Carolina Supreme Court, the board shall have jurisdiction of all matters pertaining to certification of paralegals and shall have the power and duty

(1) to administer the plan of certification for paralegals;

(2) to appoint, supervise, act on the recommendations of, and consult with committees as appointed by the board or the chairperson;

(3) to certify paralegals or deny, suspend, or revoke the certification of paralegals;

(4) to establish and publish procedures, rules, regulations, and bylaws to implement this plan;

(5) to propose and request the council to make amendments to this plan whenever appropriate;

(6) to cooperate with other boards or agencies in enforcing standards of professional conduct;

(7) to evaluate and approve continuing legal education courses for the purpose of meeting the continuing legal education requirements established by the board for the certification of paralegals; and

(8) to cooperate with other organizations, boards, and agencies engaged in the recognition, education or regulation of paralegals.

.0116 Retained Jurisdiction of the Council

The council retains jurisdiction with

respect to the following matters:

(1) amending this plan;

(2) hearing appeals taken from actions of the board;

(3) establishing or approving fees to be charged in connection with the plan;

(4) regulating the conduct of lawyers in the supervision of paralegals; and

(5) determining whether to pursue injunctive relief as authorized by G. S. 84-37 against persons acting in violation of this plan.

.0117 Privileges Conferred and Limitations Imposed

The board in the implementation of this plan shall not alter the following privileges and responsibilities of lawyers and their non-lawyer assistants.

(1) No rule shall be adopted which shall in any way limit the right of a lawyer to delegate tasks to a non-lawyer assistant or to employ any person to assist him or her in the practice of law.

(2) No person shall be required to be certified as a paralegal to be employed by a lawyer to assist the lawyer in the practice of law.

(3) All requirements for and all benefits to be derived from certification as a paralegal are individual and may not be fulfilled by nor attributed to the law firm or other organization or entity employing the paralegal.

(4) Any person certified as a paralegal under this plan shall be entitled to represent that he or she is a "North Carolina Certified Paralegal (NCCP)", a "North Carolina State Bar Certified Paralegal (NCSB/CP)", or a "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification."

.0118 Certification Committee

(a) The board shall establish a separate certification committee. The certification committee shall be composed of seven members appointed by the board, one of whom shall be designated annually by the chairperson of the board as chairperson of the certification committee. At least two members of the committee shall be lawyers, licensed and currently in good standing to practice law in this state, and two members of the committee shall be certified paralegals. The remaining members of the committee shall be either lawyers, licensed and currently in good standing to practice law in this state, or certified paralegals. The paralegals appointed to the inaugural committee

shall be exempt from the certification requirement during their initial term.

(b) Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the board to staggered terms and the initial appointees shall serve as follows: two shall serve for one year after appointment; two shall serve for two years after appointment; and three shall serve for three years after appointment. Appointment by the board to a vacancy shall be for the remaining term of the member leaving the committee. All members shall be eligible for reappointment to not more than one additional three-year term after having served one full three-year term, provided, however, that the board may reappoint the chairperson of the committee to a third three-year term if the board determines that the reappointment is in the best interest of the program. Meetings of the certification committee shall be held at regular intervals at such times, places, and upon such notices as the committee may from time to time prescribe, or upon direction of the board.

(c) The committee shall advise and assist the board in carrying out the board's objectives and in the implementation and regulation of this plan by advising the board as to standards for certification of individuals as paralegals. The committee shall be charged with actively administering the plan as follows:

- (1) make recommendations to the board for certification, continued certification, denial, suspension, or revocation of certification of paralegals and for procedures with respect thereto;
- (2) administer procedures established by the board for evaluation of applications for certification and continued certification as a paralegal and for denial, suspension, or revocation of such certification;
- (3) administer examinations and other testing procedures, if applicable, investigate references of applicants, and, if deemed advisable, seek additional information regarding applicants for certification or continued certification as paralegals; and
- (4) perform such other duties and make such other recommendations as may be delegated to or requested by the board.

.0119 Standards for Certification of Paralegals

(a) To qualify for certification as a para-

The Alliance for Paralegal Standards

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PARALEGAL PROFESSIONAL STANDARDS

The Alliance for Paralegal Professional Standards (APPS) was formed in February 2001 to implement professional standards for the paralegal profession in North Carolina. APPS is comprised of representatives from leading North Carolina paralegal organizations, namely: the North Carolina Academy of Trial Lawyers-Legal Assistants Division, the North Carolina Bar Association-Legal Assistants Division, the North Carolina Paralegal Association, Inc., the Metrolina Paralegal Association, and the Raleigh-Wake Paralegal Association. Representatives of freelance paralegals and representatives from North Carolina paralegal education programs also serve on APPS. To learn more information about APPS, you can visit our web site at www.apps-nc.org.

Prior to the formation of APPS, paralegal organizations in North Carolina had independently researched paralegal regulation. As a result of their significant efforts and the work of APPS, the "Paralegal Profession Act" (the act) was proposed and approved by all constituent APPS groups in 2002. The act was intended to be a voluntary title act not a licensing mechanism for paralegals. It defined the term "paralegal" and required paralegals to meet threshold educational criteria, fulfill annual continuing legal education requirements, and adhere to ethical guidelines. The act created a Paralegal Regulation Board comprised of paralegals, attorney paralegal educators, and attorneys. During the drafting of the act, APPS invited the North Carolina State Bar to participate. APPS strongly and consistently held that cooperation with the State Bar as well as the North Carolina Academy of Trial Lawyers and the North Carolina Bar Association was necessary to create generally acceptable professional standards for paralegals. APPS also kept the leadership of the NC Community College System, and its 25 community college paralegal programs, advised of its activities. The act was introduced in the General Assembly in April 2003 (the bill).

APPS was working with the bill sponsors to correct changes that occurred during bill drafting when it learned that the State Bar had concerns regarding the proposed legislation. APPS contacted the State Bar and asked the bill sponsors to postpone actions on the bill until these concerns could be addressed. APPS expressed its continued willingness to work with the State Bar through its Legislative Study Committee on Paralegal Regulation (Study Committee). The Study Committee included APPS in its discussions during the drafting of the current Plan for Certification of Paralegals (the plan), incorporating many elements of APPS' original proposals and being receptive to additional APPS recommendations.

APPS supports the plan and its statutory amendments and greatly appreciates the State Bar Council's unanimous vote to support the plan by publishing it for comment. As evidence of its good faith support of the plan, APPS asked that the bill be withdrawn. Establishing a professional standard for the paralegal profession in North Carolina is essential to enhancing the quality of legal services provided to the citizens of North Carolina. APPS acknowledges and sincerely appreciates the leadership, guidance, and support of its constituent members, the State Bar, the Academy, and the Bar Association in the development of The Plan for Certification of Paralegals.

legal, an applicant must pay any required fee and comply with the following standards:

(1) Education. The applicant must have earned one of the following:

- (A) an associate's, bachelor's, or master's degree or post-baccalaureate certificate from a qualified paralegal studies program; or
- (B) an associate's or bachelor's degree in

any discipline from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education; and successfully completed 18 or more semester credits at a qualified paralegal studies program, any portion of which credits may also satisfy the requirements for the associate's or bachelor's degree.

A qualified paralegal studies program is 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 as prescribed by the American Bar Association Guidelines for the Approval of Paralegal Education and is an institutional member of the Southern Association of Colleges and Schools or other regional accrediting agency recognized by the United States Department of Education.

(2) Examination. The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability. The board shall assure that the contents and grading of the examinations are designed to produce a uniform minimum level of competence among the certified paralegals.

(b) Alternative Qualification Period. For a period not to exceed two years after the date that applications for certification are first accepted by the board, an applicant may qualify by satisfying one of the following:

- (1) earned a high school diploma, or its equivalent, worked as a paralegal in North Carolina for not less than 5,000 hours during the five years prior to application, and completed three hours of continuing legal education in professional responsibility, as approved by the board;
- (2) obtained and maintained at all times prior to application the designation

Certified Legal Assistant (CLA)/Certified Paralegal (CP), PACE-Registered Paralegal (RP), or other national paralegal credential approved by the board and worked as a paralegal in North Carolina for not less than 2,000 hours during the two years prior to application; or

(3) fulfilled the educational requirements set forth in Rule .0119(a)(1)a. or b. and worked as a paralegal in North Carolina for not less than 2,000 hours during the two years prior to application.

(c) Notwithstanding an applicant's satisfaction of the standards set forth in Rule .0119(a) or (b), no individual may be certified as a paralegal if:

- (1) the individual's certification or license as a paralegal in any state is under suspension or revocation;
- (2) the individual's license to practice law in any state is under suspension or revocation;
- (3) the individual has been convicted of a criminal act that reflects adversely on the individual's honesty, trustworthiness, or fitness as a paralegal; or
- (4) the individual is not a legal resident of the United States.

(d) All matters concerning the qualification of an applicant for certification, including, but not limited to, applications, examinations and examination scores, files, reports, investigations, hearings, findings, recommendations, and adverse determinations shall be confidential so far as is consistent with the effective administration of this plan, fairness to the applicant and due process of law.

.0120 Standards for Continued Certification of Paralegals

(a) The period of certification as a paralegal shall be one (1) year. During such period the board may require evidence from the paralegal of his or her continued qualification for certification as a paralegal, and the paralegal must consent to inquiry by the board regarding the paralegal's continued competence and qualification to be certified. Application for and approval of continued certification shall be required annually prior to the end of each certification period. To qualify for continued certification as a paralegal, an applicant must demonstrate participation in not less than 6 hours of credit in board approved continuing legal education, or its equivalent, during the year within which the application for continued certification is made.

(b) Upon written request of the paralegal, the board may for good cause shown waive strict compliance by such paralegal with the criteria relating to continuing legal education, as those requirements are set forth in Rule .0120(a).

.0121 Lapse, Suspension, or Revocation of Certification

(a) The board may revoke its certification of a paralegal, after hearing before the board on appropriate notice, upon a finding that

- (1) the certification was made contrary to the rules and regulations of the board;
- (2) the individual certified as a paralegal made a false representation, omission, or misstatement of material fact to the board;
- (3) the individual certified as a paralegal failed to abide by all rules and regulations promulgated by the board;
- (4) the individual certified as a paralegal failed to pay the fees required;
- (5) the individual certified as a paralegal no longer meets the standards established by the board for the certification of paralegals; or
- (6) the individual is not eligible for certification on account of one or more of the grounds set forth in Rule .0019(c)

(b) An individual certified as a paralegal has a duty to inform the board promptly of any fact or circumstance described in Rule .0121(a).

(c) If an individual's certification lapses, or if the board revokes a certification, the individual cannot again be certified as a paralegal unless he or she so qualifies upon application made as if for initial certification and upon such other conditions as the board may prescribe. If the board suspends certification of an individual as a paralegal, such certification cannot be reinstated except upon the individual's application and compliance with such conditions and requirements as the board may prescribe.

.0122 Right to Hearing and Appeal to Council

An individual who is denied certification or continued certification as a paralegal or whose certification is suspended or revoked shall have the right to a hearing before the board and, thereafter, the right to appeal the ruling made thereon by the board to the council under such rules and regulations as the board and council may prescribe. ■

Thanks to our Sponsor

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