



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #12

REQUESTED ACTION: Approval of the report and recommendations of the Task Force on the Role of Paralegals.

In 1976 and 1997, the House of Delegates approved “Guidelines for the Utilization by Lawyers of the Service of Paralegals.” Last year, then-President Michael Miller appointed the Task Force on the Role of Paralegals to update the 1997 report, explore relevant issues and make recommendations for best practices for the use of paralegals in the context of the modern 21st century law office.

The Task Force’s proposed amendments to the guidelines are attached. The Task Force notes that it recommends adherence to the 1995 guidelines, supplemented by additional commentary. The guidelines cover the following topics: lawyers’ professional responsibility; unauthorized practice of law; authorized practice; confidentiality and conflicts of interest; professional independence of lawyers; disclosure of non-lawyer status; professional development; and fees charged for paralegal services.

Appendix 1 contains the Task Force’s recommendations, which may be summarized as follows:

- The Task Force supports continued study of the regulation of non-lawyers and recommends against new regulations at this time. Regulation should focus on voluntary programs rather than mandatory regulation.
- NYSBA’s commitment to active enforcement of unauthorized practice statutes should be reaffirmed.
- Alternate systems of delivery of legal services should be considered and implemented.
- NYSBA should create a Paralegal Division by which paralegals can become non-voting members and participate in activities.

This report was posted for comment in March 2019. Attached is a memorandum from the Committee on Legal Aid supporting the report, but noting that the Association should oppose pending legislation that would allow for the employment of non-lawyer housing court and consumer court advocates.

The report will be presented at the June 15 meeting by committee co-chairs Vincent Ted Chang and Prof. Margaret Phillips.

**NEW YORK STATE BAR ASSOCIATION
TASK FORCE ON THE ROLE OF PARALEGALS**

**REPORT AND RECOMMENDATION
MARCH 2019**

TO: Michael Miller, President
New York State Bar Association

FROM: Task Force on the Role of Paralegals

DATE: March 1, 2019

RE: Report and Recommendation on Updating the
New York State Guidelines

We attach the proposed revised New York Guidelines for the Effective Utilization by Lawyers of Paralegals, which includes the updated guidelines (amending the 1997 version) as well as the Task Force report, Appendix 1, with its Recommendations and Conclusions. The report has been approved by the Task Force.

NYSBA

New York State Bar Association Task Force on Paralegals

GUIDELINES FOR THE UTILIZATION BY LAWYERS OF THE SERVICE OF PARALEGALS

Amending Guidelines Approved by House of Delegates June, 1995 and June 19, 1976

The Committee is solely responsible for the contents of this report and the recommendations contained herein. Unless and until adopted in whole or in part by the Executive Committee or the House of Delegates of the New York State Bar Association, no part of the report should be attributed to the Association.

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ABBREVIATIONS

NYSBA	New York State Bar Association
Rule	New York Rules of Professional Conduct_ <u>(2017)</u>
NYSBA # (19xx)	New York State Bar Association Ethics Opinion # issued in 19xx.
N.Y.C. (19xx)	The Association of the Bar of the City of New York Ethics Opinion # issued in 19xx.
N.Y. County (19xx)	New York County Lawyers' Association Ethics Opinion # issued in 19xx.
Nassau County (19xx)	Bar Association of Nassau County Committee on Professional Ethics Opinion # issued 19xx.

PRELIMINARY STATEMENT

In 1995, the New York State Bar Association (“NYSBA”) issued its last iteration of its Guidelines for the Utilization by Lawyers of the Service of Legal Assistants (the “1995 NYSBA Guidelines”).¹ The 1995 NYSBA Guidelines in turn augmented NYSBA’s prior Guidelines from May 1976. More than 20 years after the NYSBA’s 1995 Guidelines were issued, NYSBA President Michael Miller convened a task force (the “Task Force”)² to supplement and reconsider issues relating to best practices and legal ethics arising from the utilization of legal assistants. The Task Force’s intent in updating the 1995 NYSBA Guidelines is to report on developments in the market for, and practices in the use of, paralegals. In addition, a core section of this Report updates the authorities supporting the 1995 NSYBA Guidelines. The Task Force recommends adherence to each of the 1995 NYSBA Guidelines, subject to the additional commentary contained in this Report.

The 1995 Guidelines, as amended by this Report, establish standards for the proper function of paralegals, subject to constraints such as the prohibition against the unauthorized practice of law. The 1995 Guidelines, and these guidelines, also establish standards for attorney oversight of paralegals. It is the hope of the Task Force that this Report and the accompanying Guidelines will facilitate and enhance the use of paralegals in an ethical fashion with the goal of cost-efficiently serving the public.³

The Revised Guidelines reflect changes resulting from the replacement of the New York

¹ The 1995 NYSBA Report and Guidelines were adopted by the NYSBA House of Delegates on June 28, 1997. The 1995 Report and Guidelines appear at Appendix 9, *infra*. This Report will refer to them as the “1995 Guidelines” or the “1995 NYSBA Guidelines.”

² The members of the Task Force are: [Jessica – please add]

³ As was the case in the 1995 Report, this report will generally use the term “paralegal” rather than “legal assistant.” However, as the 1995 Report stated, “lawyers should be aware that the terms legal assistant and paralegal are often used interchangeably.”

Lawyer's Code of Professional Responsibility and the adoption of the New York Rules of Professional Conduct by the New York State Courts Administrative Board in 2009. Until that time, New York State was the only state in the United States to still follow the outdated ABA Model Code of Professional Conduct (the Code). In order to clarify and simplify the laws governing attorney conduct, the Administrative Board of the Appellate Divisions approved the New York Rules of Professional Conduct (the Rules). Thus, with this change, New York joined the rest of the **country** and based its disciplinary laws on the American Bar Association's Model Rules of Professional Conduct. New York's rules are not a copy of the ABA Model Rules, and retain some individual rules from the Code, but the organization, and much of the content and comments are similar to those in the Model **Rules**.

In Appendix I, the Task Force sets out several general recommendations.

First, the Task Force urges further study of potential regulations with respect to the ethical standards and qualifications of paralegals but does not recommend the adoption of such standards at this time.

Second, the Task Force adheres to the recommendations of the 1995 report and urges that NYSBA continue its vigorous efforts to counter the unauthorized practice of law and to promote the use of paralegals where such use would be ethically and economically feasible and beneficial.

Finally, the Task Force recommends that NYSBA create a Paralegal Division through which paralegals can become non-voting members of NYSBA and participate in NYSBA's activities, but particularly in programs aimed at the enhancement of the paralegal profession. It is our hope that the proposed Paralegal Division could continue the work of this Task Force in considering and implementing proposals for the betterment of the paralegal profession.

DEFINITION

The 1995 NYSBA Report defined legal-assistant/paralegal as:

“a person qualified through education, training or work experience who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, which requires a sufficient knowledge of legal concepts that, absent such legal assistant/paralegal, the attorney would perform the task.”

The Task Force recommends the adoption of the ABA guideline, which reads as follows: “A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.”⁴

The Task Force believes that ABA definition is broader than the 1995 NYSBA definition and better reflects the tasks that paralegals often perform. The Task Force believes that there is some value to aligning the New York definition with the definition used elsewhere. In addition, the Task Force believes that the broader phrase “substantive legal work for which a lawyer is responsible” more accurately captures the broad range of tasks that paralegals perform.⁵

OVERVIEW OF THE PARALEGAL MARKET

Several years ago, the Associated Press suggested that technology would make paralegals obsolete.⁶ In fact, the market for paralegal services remains robust. The Bureau of Labor Statistics reports that there are 290,000 paralegals in the US, 26,000 of whom are in New York

⁴ ABA Definition of Legal Assistant/Paralegal (<https://www.americanbar.org/groups/paralegals.html>)

⁵ It is also notable that both NALA and NFPA adopted the ABA definition of "paralegal" See NALA definition (<https://www.nala.org/about-paralegals>); NPPA Definition (<https://www.paralegals.org/i4a/pages/index.cfm?pageid=3315>)

⁶ M. Davis, Technology Has Not Replaced the Need for Paralegals, ABA Journal (Feb. 2018) (http://www.abajournal.com/magazine/article/technology_has_not_replaced_need_for_paralegals)

State. The BLS also reports that the median salary of paralegals exceeds \$50,000 a year and that job growth from 2016-2026 is projected at 15 percent, which is “much faster than average.”⁷ BLS reported that, “[t]he growing demand of paralegal professionals at a very rapid rate has resulted in schools and colleges catering to such education popping up everywhere. It has been found through a survey that currently 50,000 students are enrolled in paralegal education courses.” These trends are likely to continue.

Far from rendering paralegals obsolete, the advent of new technology has increased the need for paralegals to manage and use technology.⁸ And the pressure to lower legal costs has likely adversely affected the market for attorneys, causing law firms and other employers of paralegals to entrust more tasks to paralegals including, as the BLS stated, “maintaining and organizing files, conducting legal research, and drafting documents.”

ACCESS TO JUSTICE

The Task Force stresses the importance of paralegals as a force for closing the justice gap. The 1995 Report correctly observed, quoting the report of the Marrero Commission⁹, that “[t]he expanded use of traditional legal assistants also presents an opportunity to service poor and lower

⁷U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, Occupational Employment and Wages, Paralegals and Legal Assistants (updated through February 15, 2019) <https://www.bls.gov/oes/current/oes232011.htm>

⁸ Cheryl Clark, Trends in the Paralegal Profession, J. Kan. B. Ass'n, May 2016, at 7 (topics related to technology. In many law offices, attorneys rely on paralegals to select, manage and operate law-related software. They assist in e-discovery, understand and manage databases, facilitate case management software, create searchable electronic documents, and orchestrate the technology aspects of trial presentations. As a result, paralegal programs are expanding their technology offerings and are training students on a diverse array of word processing, spreadsheet, timekeeping, trial presentation, legal research and case management software. It is impossible for paralegal programs to teach every form of legal software available, but it is necessary for paralegal programs to introduce their students to new concepts and provide education in these areas. The more paralegals know about technology and legal software programs, the more job security they will have when they enter the workforce.)

⁹ 1995 NYSBA Report at 41 & n.3 (citing Report of the Chief Judge’s committee on Improving the Availability of Legal Services) (April 1990)).

middle income persons.” The introduction to the 1995 Report quoted from the then operative New York State Code of Professional Responsibility stating that:

The New York State Bar Association Code of Professional Responsibility (hereinafter "Code of Professional Responsibility") commits members of the bar to the provision of legal services to the public at a reasonable fee. This goal is embodied in Canon 2: "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available," and also in Canon 8: "A lawyer should assist in improving the legal system." The employment of educated and trained legal assistants presents an opportunity to expand the public's accessibility to legal services at a reduced cost while preserving attorneys' time for attention to legal services which require the independent exercise of an attorney's judgment. This should enhance the quality of legal services and, at the same time, reduce the total cost of those services.

We reaffirm this statement in the 1995 Report, recognizing the importance of access to justice for all.

Since 1995, the so-called “justice gap” has become even more acute and thus the need for the use of **paralegals** to bridge that gap has become more acute as well. As reported in research compiled by the New York County Lawyers Association in a report later approved by the NYSBA House of Delegates¹⁰, the overwhelming majority of low-income individuals and families, and roughly half of those of moderate income, face their legal problems without a lawyer.¹¹ This “justice gap” is huge and is not closing.¹² Paralegals can help provide affordable legal services for underserved populations of low and middle income consumers who cannot

¹⁰REPORT OF NYCLA TASK FORCE ON ON-LINE LEGAL PROVIDERS REGARDING ON-LINE DOCUMENTS (Approved New York State Bar Association House of Delegates) <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=77879>

¹¹ Raymond H. Brescia, What We Know and Need to Know about Disruptive Innovation, 67 S.C. L. REV. 203, 206 (2016), http://www.americanbar.org/content/dam/aba/images/office_president/brescia_whitepaper.pdf; See also Deborah L. Rhode, Access to Justice: An Agenda for Legal Education and Research, 62 J. LEGAL EDUC. 531, 531 (2013).

¹² Discussion of the “justice gap” is not new. See, e.g., Houseman, Alan, The Justice Gap: Civil Legal Assistance Today and Tomorrow, CENTER FOR AMERICAN PROGRESS (June 2011), <https://www.americanprogress.org/wpcontent/uploads/issues/2011/06/pdf/justice.pdf> ; see also Documenting the Justice Gap In America The Current Unmet Civil Legal Needs of Low-Income American, LEGAL SERVICES CORPORATION (Sept. 2009), (<https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGaInAmeric a2009.authcheckdam.pdf>)

afford lawyers. In New York State alone, “[s]ome 1.8 million litigants in civil matters do not have representation when addressing the “core essentials of life –housing, family matters, access to health care and education and subsistence income.”¹³ In New York, over 90% of people involved in housing, family, and consumer problems have no legal representation.¹⁴ According to some estimates, “about four-fifths of the civil legal needs of the poor and two to three-fifths of the needs of middle income individuals remain unmet.”¹⁵

NYSBA has recognized the role that paralegals can play in providing access to justice. In 2015, NYSBA’s House of Delegates approved a task force report which endorsed a pilot program to use Housing Court Advocates to assist tenants in Housing Court to defend against nonpayment eviction proceedings, pursue remedies for violation of the Housing Code, and obtain repairs in holdover proceedings. The program also involved the use of Consumer Court Advocates to assist debtors in the New York City Civil Courts. NYSBA cautioned that its support for such programs was contingent upon the development of appropriate administrative, supervision, rules and training programs to protect the interests of clients.

Paralegals have played a significant role in closing the justice gap in states such as Washington, New York, Utah, and Oregon.¹⁶ These programs build on an earlier generation of

¹³ TASK FORCE TO EXPAND ACCESS TO JUSTICE TO CIVIL LEGAL SERVICES IN NEW YORK REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 2, 3 (Nov. 2014) (<http://nycourts.gov/accesstojusticecommission/PDF/CLS%20TaskForce%20Report%202014.pdf>); *See also* Alan Houseman, The Justice Gap: Legal Assistance Today and Tomorrow, CTR. FOR AM. PROGRESS, 3 (Jun. 22, 2011), <https://www.americanprogress.org/issues/courts/reports/2011/06/22/9824/the-justice-gap/>.

¹⁴ *See* Tom Gordon, Comments on Issues Paper on the Future of Legal Services, AMERICANBAR.ORG, 1 (Dec. 10, 2014), https://www.americanbar.org/content/dam/aba/images/office_president/responsive_law.pdf. “In New York, 2.3 million pro se litigants try to find their way through the civil justice system each year.” Wallace B. Jefferson, Chief Justice of the Supreme Court of Texas, Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights, 19th Annual Justice William J. Brennan Lecture on State Courts and Social Justice, Address at N.Y.U. School of Law, 1960 (Dec. 2013), <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-88-6-Jefferson.pdf>.

¹⁵ NYCLA Report, *supra* at n.12 (citing Deborah Rhode, Access to Justice, 3 (2004)).

¹⁶ [R. Sandefur and T. Clarke, “Roles Beyond Lawyers: Evaluation of the New York City Court Navigators Program and its Three Pilot Projects,” \(American Bar Foundation \(Dec. 2016\)\)](#)

programs such as the Onondaga County housing court program discussed in the 1995 Report.

While the details of these programs vary from state to state, these programs all use non-lawyers to assist low and/or moderate-income clients in such areas as landlord-tenant, family law, debt collection, and small claims. As a general matter the Task Force approves of these initiatives, which are largely in their nascent stages. Further review of the results of these programs is necessary to fully evaluate the use of, for example, Legal Technicians in Washington State or the Navigator program in New York, but the preliminary results appear encouraging. We note that in 2015, NYSBA's House of Delegates gave its approval to a New York pilot program in which non-lawyers were used to provide assistance to low-income clients in housing court.¹⁷

To date, NYSBA's support of such programs has been confirmed. The American Bar Foundation and the National Center for State Courts conducted perhaps the most comprehensive study of these initiatives to date.¹⁸ Their research shows the potential of programs such as New York's pilot programs which use non-lawyers to improve access to justice for low and moderate-income individuals. The ABA/NCSC study reviewed three programs. First, it analyzed New York's Access to Justice Navigators Pilot Project which is built around trained volunteer

http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf . See Lori W. Nelson, Limited License Legal Technician: What It Is, What It Isn't, and the Grey Area in Between, 50 Fam. L.Q. 447, 459–60 (2016) (adopted in WA, considered in OR; while Washington LLLTs are limited to working in family law, the Oregon Task Force recommended their LLLTs also be permitted to work on landlord-tenant and small claims cases); *id.* (New York has taken a different approach from Washington's LLLT program with its Court Navigator Program created by New York Court of Appeals Chief Judge Jonathan Lippman.⁶³ Navigators are unlicensed individuals who provide free assistance to pro se litigants involved in landlord-tenant housing cases in Brooklyn and those involved in consumer debt cases from the Bronx and Brooklyn. This assistance ranges from simple guidance about the courthouse to actually filling out forms.) In December 2015, the Utah Supreme Court approved the creation of a Limited Paralegal Practitioner (LPP) who will be allowed to provide certain limited legal services in approved practice areas, such as certain areas of family law, landlord-tenant, and debt collection. See Utah Supreme Court Backs Licensed Paralegal Practitioners, ABA Journal (12/6/15).

¹⁷ Report and Recommendation of the Committee to Study the Court Advocates Proposal (approved NYSBA House of Delegates).

<http://www.nysba.org/workarea/DownloadAsset.aspx?id=55515>

¹⁸Sandefur & Clarke, *supra* at n. 18

(http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf)

Navigators “for the day.” These Navigators assist unrepresented litigants in understanding and moving through nonpayment or debt collection proceedings.¹⁹ Second, it examined New York’s Housing Court Answers Navigators Pilot Project which involves trained volunteer Navigators “for the day,” operating in the Brooklyn Housing Court. These Navigators provide individualized assistance with tenants’ preparation of a legal document, the “answer” to the landlord’s petition for nonpayment of rent, in which the tenant responds to the petition by asserting defenses. Finally, it reviewed the University Settlement Navigators Pilot Project which employs trained caseworkers who work for a nonprofit organization. These Navigators, operating in the Brooklyn Housing Court, are Navigators “for the duration,” working the case from initial appearance through resolution and beyond.

In its research on New York’s Navigator programs, the American Bar Foundation/NCSC study found positive results:

- The programs were found to be appropriate uses of trained personnel without full formal legal training and to have potential for sustainability. Navigator programs, through their impact on both legal and life outcomes, thus can result in financial savings to society as well as a reduction in the hardships experienced by unrepresented litigants.
- Surveys of litigants revealed that litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story.
- Litigants assisted by Housing Court Answers Navigators asserted more than twice as many defenses as litigants who received no assistance.
- A review of case files reveals that tenants assisted by a Housing Court Answers Navigator were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator assisted cases.
- In cases assisted by these University Settlement Navigators, zero percent of tenants experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every 9 nonpayment cases filed citywide.²⁰

¹⁹ *Id.* at 4

²⁰ *Id.* at 5-6

At a minimum, the Task Force views these programs as worthy of further study and fully supports the use of pilot programs in New York designed to test the viability of such approaches to addressing access to justice issues.

While the Task Force regards access to justice issues as the most significant issue requiring supplementation of the commentary contained in the 1995 NYSBA Report, it remains the case that, as in 1995, the use of paralegals today raises a host of ethical and practical issues that should be addressed by the organized bar. The following Guidelines revise and supplement the Guidelines that the NYSBA issued in 1976 and 1995. As was the case at both those times, these guidelines are intended to assist attorneys in understanding the role of paralegals in the delivery of high quality, cost effective legal services to the public in accordance with the ethics rules and with best practices.

The Task Force reaffirms the pronouncements in the 1995 Guidelines relating to the value of paralegals. Those statements remain as true today as they were in 1995 and we quote them in full:

The legal profession recognizes legal assistants as dedicated professionals with skills and abilities which contribute to the delivery of cost-effective, high quality legal services. The New York State Bar Association *Ad Hoc* Committee on Non Lawyer Practice studied the role of the legal assistant and in its report, approved by the House of Delegates in 1995, made the recommendation to support the expanded use and role of traditional legal assistants. The committee indicated its belief that the expanded use of the traditional legal assistant will benefit both the client and the bar. It recommended that court rules and ethical rules be developed to encourage the expanded use of traditional legal assistants. See Appendix 1 for the full text of the recommendations of the *Ad Hoc* Committee on Non-Lawyer Practice.

NSYBA 2019 GUIDELINES

It is recognized that these Guidelines are not static, but are subject to modification.

Attorneys who desire further advice on questions of utilization may contact the New York State Bar Association.

GUIDELINE I
LAWYERS' PROFESSIONAL RESPONSIBILITY

A LAWYER MAY PERMIT A PARALEGAL TO PERFORM SERVICES IN THE REPRESENTATION OF A CLIENT PROVIDED THE LAWYER:

- (A) RETAINS A DIRECT RELATIONSHIP WITH THE CLIENT;
- (B) SUPERVISES THE PARALEGAL'S PERFORMANCE OF DUTIES; AND
- (C) REMAINS FULLY RESPONSIBLE FOR SUCH REPRESENTATION, INCLUDING ALL ACTIONS TAKEN OR NOT TAKEN BY THE PARALEGAL,

EXCEPT AS OTHERWISE PROVIDED BY STATUTE, COURT RULE OR DECISION, ADMINISTRATIVE RULE OR REGULATION, OR BY THE NEW YORK RULES OF PROFESSIONAL CONDUCT.

COMMENTARY

Rule 5.3 of the Rules of Professional Conduct addresses the lawyer's responsibility for conduct of nonlawyers, stating in pertinent part:

- (a) A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate. A lawyer with direct supervisory authority over a nonlawyer shall adequately supervise the work of the nonlawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter and the likelihood that ethical problems might arise in the course of working on the matter.

Comment 2 to this rule states that the purpose of requiring supervision of nonlawyers, is to reasonably assure that the conduct of nonlawyers employed by or retained by or associated with the law firm, including nonlawyers outside the firm working on firm matters, is compatible with the professional obligations of the lawyers and firm.

As stated in N.Y. County 641 (1975) (quoting N.Y. County 420 (1953)).

"What an employee, who is not a lawyer, does in the course of his employment by the law office is deemed a professional service by the law firm for which it is charged with full responsibility. Consequently, his work must be done under the supervision and direction of one or more lawyers in the firm, ... "

In order to retain a "direct relationship" with the client, a lawyer need not be in contact with the client with any specified degree of regularity or frequency, The lawyer should, however, at all reasonable times be available for consultation by the client, and whenever in the course of supervising the legal assistant's work it appears that communication with the client is desirable he should act accordingly in the client's interest.

Of course, the obligations imposed upon a lawyer with respect to the services of his legal assistant do not in any way relieve the latter from his personal obligation to obey the law and his employer's instructions.

In order to maintain a direct relationship with the client, a lawyer need not be in contact with the client with any specified degree of regularity or frequency. However, the lawyer should at all reasonable times be available for consultation by the client. *See* N.Y. State 677 (1995) (lawyer may delegate attendance at real estate closing to a legal assistant under attorney supervision.) *See also* Nassau County 90-13 (1990); Nassau County 2002-3 (2002) (a lawyer or law firm may utilize paralegals or other non-lawyer personnel to perform real estate closings under the guidance and supervision of an attorney, even though the attorney is not physically present at the closings, provided the attorney maintains a direct relationship with the client, properly supervises the delegated work, and has complete responsibility for the work product.); N.Y. State 693 (1997) (a lawyer may allow a paralegal to use a signature stamp to execute escrow checks from a client trust account so long as the lawyer supervises the delegated work closely as provided in this Opinion and exercises complete professional responsibility for the acts of the paralegal); and ABA Formal Opinion 477R (2017) (supervisory requirement extends to electronic practices which are comparable to other office procedures.)

Rule 5.3(b) specifies that the lawyer is responsible for a paralegal's conduct that violates the Rule of Professional Conduct in certain circumstances. Specifically:

- (b) A lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer, if:
- (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
 - (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the nonlawyer is employed or is a lawyer who has supervisory authority over the nonlawyer; and
 - (i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or
 - (ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

A lawyer's failure to adequately supervise a paralegal can lead to disciplinary sanctions on the lawyer. *Matter of Rozenzraft*, 143 A.D.3d 54, 36 N.Y.S. 3d 711 (3^d Dep't 2016) (attorney's wholesale disregard of his duty to supervise his paralegals – including allowing paralegal to conduct residential closings and allowing them to use his signature stamp and sign his name on real estate operating accounts, all without supervision – led to two year suspension); *In Re Gaesser*, 290 A.D.2d 58, 737, N.Y.S.2d 719 (4th Dep't 2001) (suspending attorney for 3 years for failing to supervise a paralegal even after paralegal had admitted to forging checks drawn on attorney trust account). A lawyer's failure in the fundamental duty to supervise paralegals closely can lead to multiple ethical violations. *In re Castelli*, 131 A.D.3d 29, 11 N.Y.S.3d 268 (2^d Dep't 2015) (three-year suspension from practice for attorney for multiple violations, including allowing paralegals to use business cards that didn't specify "paralegal"; allowing paralegal to enter into fee arrangements and retainer agreements with clients; using signature stamp to sign pleadings not checked by the attorney, as well as checks from IOLA account).

A lawyer has the further responsibility to instruct the paralegal regarding ethics. Comment 2

to Rule 5.3 states in pertinent part:

A law firm must ensure that such nonlawyer assistants are given appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose confidential information.

In delegating tasks, the lawyer should provide instruction regarding the ethical constraints under which those in the law office must work. While the non-lawyer may receive some guidance in this regard elsewhere, as for instance through the New York Rules of Professional Conduct and the Model Code of Ethics and Professional Responsibility adopted by the foremost paralegal associations, National Association of Legal Assistants ("NALA") and the National Federation of Paralegal Associations ("NFPA"), the lawyer should not rely on others to perform this important task. N.Y. City 1995-11.

Paralegals, though not members of the bar and not technically bound by the Rules of Professional Conduct, have demonstrated the need for adherence to ethical guidelines through the adoption of the NALA and NFPA Model Code of Ethics and Professional Responsibility, attached as Appendix 6. The study of ethics is also included in all paralegal educational programs that are approved by the ABA.

GUIDELINE II

A LAWYER SHALL NOT ASSIST A PARALEGAL IN THE PERFORMANCE OF AN ACTIVITY THAT CONSTITUTES THE UNAUTHORIZED PRACTICE OF THE LAW.

COMMENTARY

The unauthorized practice of law is prohibited by statute, the Rules of Professional Conduct, and court decisions. Sections 478 and 484 of the Judiciary Law prohibit individuals who are not licensed members of the Bar of the State of New York (with

certain exceptions hereinafter noted) from engaging in the practice of the law. Any person, including a legal paralegal, who violates the statute may be punished for criminal contempt and the conduct may be enjoined. See Judiciary Law, Sections 750(B), 476-a and 476-b. *See Carter v. Flaherty*, 37 Misc. 3d 46, 953 N.Y.S. 2d 814 (2d Dep't 2012) (contract between prisoner and independent paralegal for "paralegal services" which included review of case and opinion on potential success for habeas corpus motion ruled illegal as violative of Judiciary Law Section 478 and therefore unenforceable.); *Sussman v. Grado*, 192 Misc. 2d 628, 746 N.Y.S.2d 548 (Dist. Ct. Nassau Cty 2002) (finding that independent paralegal "crossed the line" and used "independent judgment" in attempt to compose "turnover order" to help client execute judgment, thereby practicing law; contract to do so violated General Business Law § 349 and was therefore void; court reported action to Attorney General).

The issue of whether an attorney may bill the services of an assistant as a "paralegal" when the employee was not a graduate of a legal program and not certified by any particular body, was discussed in NYSBA Bar Op. 1079 (2015). The NYSBA noted that the term "paralegal" only appears in Comment [4] to Rule 1.10 (vicarious disqualification) and is not defined. NYSBA further explained that "use of the term 'paraprofessionals' in Comment [2] to Rule 5.4 indicates that the Rules place greater importance on the role these individuals play than on the name applied to them." The Rules require attorneys to supervise paralegals adequately; the Rules, however, do not contain a prohibition for charging for the time of paralegals. The NYSBA concluded that since New York does not require certification for paralegals, the term "paralegal" does not imply certification. Therefore, it is not improper to describe non-certified individuals as "paralegals" and charge a paralegal rate, provided that the rate is not excessive.

See also NYSBA Op. 695 (1997) (use of "Certified Legal Assistant" is permissible if certifying entity meets certain standards and disclosure is made of certifying entity); *Frances v. Atlantic Infiniti*, 34 Misc. 3d 1221, 950 N.Y.S.2d 608 (App. Term. 2012). (holding that attorneys cannot bill secretarial work at paralegal work).

Rule 5.5 of the N.Y. Rules of Professional Conduct provides that: ". . . A lawyer shall not aid a nonlawyer in the unauthorized practice of law."

There is no all-inclusive definition of the phrase "practice of law in New York." It has

occasionally been referred to as an act requiring the exercise of "independent professional legal judgment." N.Y. State 304 (1973); *Carter v. Flaherty*, 37 Misc 3d 46, 953 N.Y.S.2d 814 (2nd Dept. 2012) (contract between prisoner and independent paralegal for "paralegal services" which included review of case and opinion on potential success for habeas corpus motion ruled illegal as unauthorized practice of law violating Judiciary Law Section 478 and therefore unenforceable); *Matter of Sobolevsky*, 96 A.D.3d 60, 944 N.Y.S.2d 20 (1st Dep't 2012) (holding that attorney should be suspended for 2 years because he had relied on paralegal work without checking it and had therefore aided in the assistance of the unauthorized practice of law; failed to supervise nonlawyer acting at his direction); *Sussman v. Grado*, 192 Misc. 2d 628, 746 N.Y.S.2d 548 (Dist. Ct. Nassau County 2002) (finding that independent paralegal "crossed the line" and used "independent judgment" in attempt to compose turnover order to help client execute judgment, thereby practicing law; contract to do so violated General Business Law § 349 and was therefore void; court reported action to Attorney General).

Comment 2 to Rule 5.5 states, "Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See* Rule 5.3. .

A paralegal may not represent a client in court, give legal advice or set legal fees. However, depending on court rule, a paralegal may answer calendar calls provided no oral argument is necessary and the role is confined to purely ministerial activity. N.Y. County 682 (1990); N.Y. County 666 (1985) (lawyer may not assign a legal assistant to perform any services which involve the independent exercise of professional legal judgment.). *See also* N.Y.

City 1995-11 (comprehensive analysis of a lawyer's responsibility toward non-lawyer personnel under his or her supervision.); N.Y. State 44 (1967) (law clerk's role is that of student, and attorney must provide supervision and not permit clerk to be involved in matters involving independent discretion or judgment.)

As defined by the *Ad Hoc* Committee on Non Lawyer Practice, a freelance paralegal "as an independent contractor with supervision by and/or accountability to a lawyer," satisfies existing ethical rules which require the direct supervision of an attorney. *But see Carter v. Flaherty*, 37 Misc 3d 46, 953 N.Y.S.2d 814 (2^d Dep't. 2012) (contract between prisoner and independent paralegal for "paralegal services" which included review of case and opinion on potential success for habeas corpus motion ruled illegal as unauthorized practice of law violating Judiciary Law Section 478 and therefore unenforceable).

GUIDELINE III **AUTHORIZED PRACTICE**

A PARALEGAL MAY PERFORM CERTAIN FUNCTIONS OTHERWISE PROHIBITED WHEN AND ONLY TO THE EXTENT AUTHORIZED BY STATUTE, COURT RULE OR DECISION, OR ADMINISTRATIVE RULE OR REGULATION.

COMMENTARY

A paralegal is not engaged in the unauthorized practice of law when acting in compliance with statutes, court rules or decisions, or administrative rules and regulations which establish authority in specific areas for a lay person to appear on behalf of parties to proceedings before certain administrative agencies.

The Federal Administrative Procedure Act, 5 U.S.C. § 555(b) (2011) authorizes federal administrative agencies to permit representation by non-lawyers. *Sperry v. Florida ex. rel. Florida Bar*, 373 U. S. 379 (1963). *Sperry* held that no state may prohibit, through its UPL

provisions, a non-lawyer from practice before a federal administrative agency if the agency itself and federal statute authorizes such practice. -

Several bar associations have considered what actions may be delegated to a paralegal.

These services typically include, but are not limited to: researching legal matters; developing an action, procedure, technique, service or application; preparing and interpreting legal documents; selecting, compiling and using technical information; assisting the lawyer in court: handling administrative matters with tribunals; handling real estate closings; and analyzing and following procedural problems that involve independent decisions. Nassau County 90-13 (1990) (attorney may assign a legal assistant to attend a closing of title but only if the attorney strictly supervises.); *see also* N.Y. State 667 (1995); N.Y.State 693 (1997); N.Y. City 884 (1974); N.Y. State 44 (1967); and Nassau County 2002-3 (2002). According to NYSBA 693, an attorney may permit a paralegal to use a stamp bearing the attorney’s signature to execute escrow checks. “A lawyer may allow a paralegal to use a signature stamp to execute escrow checks from a client trust account so long as the lawyer supervises the delegated work closely as provided in this Opinion and exercises complete professional responsibility for the acts of the paralegal.”

In the Department of Labor’s Occupational Outlook Handbook (2018) the Bureau of Labor Statistics provides a description of paralegal and legal assistant tasks, stating:

Paralegals and legal assistants perform a variety of tasks to support [lawyers](#), including maintaining and organizing files, conducting legal research, and drafting documents.

Duties

Paralegals and legal assistants typically do the following:

- Investigate and gather the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and maintain documents in paper or electronic filing systems
- Gather and arrange evidence and other legal documents for attorney review and case preparation

- Write or summarize reports to help lawyers prepare for trials
- Draft correspondence and legal documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials by handling exhibits, taking notes, or reviewing trial transcripts
- File exhibits, briefs, appeals and other legal documents with the court or opposing counsel
- Call clients, witnesses, lawyers, and outside vendors to schedule interviews, meetings, and depositions

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. Paralegals use technology and computer software for managing and organizing the increasing amount of documents and data collected during a case. Many paralegals use computer software to catalog documents, and to review documents for specific keywords or subjects. Because of these responsibilities, paralegals must be familiar with electronic database management and be current on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials obtained by the parties during the litigation or investigation. These materials may be emails, data, documents, accounting databases, and websites.

GUIDELINE IV **CONFIDENTIALITY & CONFLICT OF INTEREST**

IT IS THE RESPONSIBILITY OF A LAWYER TO TAKE REASONABLE MEASURES TO ENSURE THAT ALL CLIENT CONFIDENCES ARE PRESERVED BY THE PARALEGAL AND TAKE APPROPRIATE MEASURES TO AVOID POTENTIAL CONFLICTS OF INTEREST ARISING FROM EMPLOYMENT OF PARALEGALS.

COMMENTARY

Confidentiality: Rule 1.6(a) provides: “Confidential information” consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.

“Confidential information” does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

Rule 1.6(c) provides that “a lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer from disclosing or

using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.

Rule 1.6 expressly mandates an attorney to prevent employees and other service providers from disclosing or using confidential information as defined above. Thus an attorney should make clear to paralegals their obligations under the rules, institute measures to prevent inadvertent disclosure by paralegals, and exercise reasonable supervision of paralegals in this regard. (Rule 5.3 (a) Comment 2); NYSBA Op. 774 (2004). *See also Moray v. USF Industries, Inc.* 156 A.D.3d 781, 67 N.Y.S.3d 256 (2^d Dep't 2017) (disqualifying attorney because his paralegal had represented opposing party in his prior employment, there was a "reasonable probability of disclosure of confidential information obtained during paralegal's prior employment given extent of his involvement in defendants' affairs, law firm of plaintiff's counsel had only two attorneys, and no effort was made to erect adequate screening measures around associate attorney"); *Mulhern v. Calder*, 196 Misc. 2d 818 (Sup. Ct. Alb. Co. 2003) (Supreme Court refused to disqualify a law firm that had hired a secretary who had previously been a secretary/paralegal for opposing counsel and had assisted opposing counsel on the case in question. The court said that a hiring firm "can avoid disqualification by taking steps to ensure that non-lawyer employees with confidential information are kept from divulging or using confidences obtained at the prior firm" and that the law firm's timely construction of a screen around the secretary/paralegal was sufficient to protect the firm from disqualification); NYSBA Op. 774 (2004) (Law firm hiring a non-lawyer who has previously worked for another firm must supervise the non-lawyer, including instructing the non-lawyer not to disclose any confidential information and instructing its own lawyers not to exploit such information; law firm may need to conduct comprehensive conflict check based on non-lawyer's prior work); *see also*, N.Y. City 1995-11 (lawyer responsible for maintaining confidentiality should sensitize non-lawyers to

pitfalls); N.Y. State 503 (1979) (lawyer bound not to reveal confidences and secrets acquired while employed as legal assistant prior to admission to bar).

Conflict of Interest: Rule 5.3(a) provides: A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised. Rule 5.3(b) provides that “a lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer” and the lawyer orders or directs the conduct, or in the capacity of supervising lawyer, knows or should have known of the conduct and taken measures to avoid or mitigate it.

Rule 1.10 (a), dealing with imputation of conflicts of interest requires that if an attorney in a firm is prohibited from representing a client, all attorneys in the firm are so prohibited. Thus if an attorney hired from another firm possesses confidential information of a client in a matter adverse to a current client of the hiring firm, that attorney’s disqualification under Rule 1.9, is imputed to the entire hiring firm. However, Comment 4 clearly states that the provisions regarding imputation of conflicts do not apply to non-lawyers who should be screened if they possess otherwise disqualifying information.

NYSBA Op 905 (2012), modifying NYSBA Op. 503, comes to a similar conclusion in the case of a new attorney who was a paralegal at another firm before admission and acquired confidential information of a client adverse to a client in the hiring firm, A, during his work as a paralegal at the other firm, B.

“We interpret Rules 1.9 and 1.10 in a more limited manner. While the prospective lawyer was certainly employed by Law Firm B, he was not ‘associated’ with that firm during his tenure as a paralegal. As used in Rules 1.9 and 1.10, the term ‘associated’ denotes a more significant relationship, such as holding a position as partner, associate, or of counsel at the former law firm. While the prospective lawyer may have gained material confidential information pertaining to

Matter X in his work as a paralegal or legal assistant while at Law Firm B, he did not obtain it while ‘associated’ with Firm B as an attorney.”

- “Law Firm A also has an obligation to ‘make reasonable efforts to ensure that all lawyers in the firm conform to the [] Rules.’ Rule 5.1(a). Once the prospective lawyer is admitted to practice and hired by Law Firm A, it too has an independent obligation to ensure that he does not reveal any confidential information learned while employed at Firm B.”
- “It is also advisable for Law Firm A, upon hiring the prospective lawyer, to perform a conflicts check reasonable under the circumstances... If the prospective attorney played more than a ministerial role in the matter at Law Firm B, which appears to be the case in Matter X, screening of the prospective attorney may be required under Rule 5.1(a) to prevent the misuse of confidential information and to implement the ‘reasonable efforts’ that must be undertaken under that provision to ensure that all lawyers conform to the Rules.”

See also In Re Lowell, 14 A.D.3d 41, 784 N.Y.S.2d 69 (1st Dep’t 2004) (disbarring attorney for multiple egregious acts and a pattern of deceit, including allowing paralegal to work on case in which paralegal had conflict and questioning paralegal on other side’s strategy); *Moray v. USF Industries, Inc.* 156 A.D.3d 781, 67 N.Y.S.3d 256 (2^d Dep’t 2017) (disqualifying attorney because his paralegal had represented opposing party in his prior employment, there was a “reasonable probability of disclosure of confidential information obtained during paralegal’s prior employment given extent of his involvement in defendants’ affairs, law firm of plaintiff’s counsel had only two attorneys, and no effort was made to erect adequate screening measures around associate attorney”); *Mulhern v. Calder*, 196 Misc. 2d 818 (Sup. Ct. Alb. Co. 2003) (Supreme Court refused to disqualify a law firm that had hired a secretary who had previously been a secretary/paralegal for opposing counsel and had assisted opposing counsel on the case in question. The court stated that a hiring firm “can avoid disqualification by taking steps to ensure that non-lawyer employees with confidential information are kept from divulging or using confidences obtained at the prior firm.” The court also stated that the law firm’s timely construction of a screen around the secretary/paralegal was sufficient to protect the firm from

disqualification); *Glover Bottled Gas Corp. v. Circle M. Beverage Barn, Inc.*, 129 A.D. 2d 678, 514 N.Y.S. 2d 440, 441 (2d Dep't 1987) (counsel disqualified from further representation after employing legal assistant from adversary firm.).

The ABA's "Model Guidelines for Utilization of Paralegal Services," (2018) address a lawyer's responsibility as follows:

Model Rule 5.3 requires lawyers with direct supervisory authority over a paralegal and partners/lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the conduct of the paralegals they employ is compatible with their own professional obligations, including the obligation to prevent conflicts of interest. Therefore, paralegals should be instructed to inform the supervising lawyer and the management of the firm of any interest that could result in a conflict of interest or even give the appearance of a conflict. The guideline intentionally speaks to "other employment" rather than only past employment because there are instances where paralegals are employed by more than one law firm at the same time. The guideline's reference to "other interests" is intended to include personal relationships as well as instances where the paralegal may have a financial interest (i.e., as a stockholder, trust beneficiary, or trustee, etc.) that would conflict with the clients in the matter in which the lawyer has been employed.

See Guideline 7, page 14. ABA Guideline 7 also provides that "Lawyers must ensure that paralegals are instructed to disclose an interest that could create an apparent or actual conflict of interest." (page 14).

If a conflict arises, it may be possible to isolate the paralegal. To the extent that such a mechanism is appropriate for a lawyer, it should be appropriate for a paralegal. According to the ABA Guidelines:

Adequate and effective screening of a paralegal may prevent disqualification of the new firm. Model Rule 1.10, comment 4. Adequate and effective screening gives a lawyer and the lawyer's firm the opportunity to build and enforce an "ethical wall" to preclude the paralegal from any involvement in the client matter that is the subject of the conflict and to prevent the paralegal from receiving or disclosing any information concerning the matter. ABA Informal Opinion 1526 (1988). The implication of the ABA's informal opinion is that if the lawyer, and the firm, do not implement a procedure to effectively screen the paralegal from involvement with the litigation, and from communication with attorneys and/or co-employees concerning the litigation, the lawyer and the firm may be disqualified from representing either party in the controversy.

See Guideline 7, page 15.

GUIDELINE V
PROFESSIONAL INDEPENDENCE OF LAWYERS

A LAWYER SHALL NOT FORM A PARTNERSHIP WITH A PARALEGAL IF ANY PART OF THE FIRM'S ACTIVITIES CONSISTS OF THE PRACTICE OF LAW, NOR SHALL A LAWYER SHARE LEGAL FEES WITH A PARALEGAL.

COMMENTARY

Non-lawyer compensation may be tied to the net profits and business performance of a firm: thus, discretionary bonuses may properly be paid to non-lawyer employees without violating the rule against sharing legal fees. N.Y. City 1995-11. *See also*, N.Y. City 884 (1974); N.Y. State 282 (1973); ABA 325 (1970). Rule 5.4 (a) provides in pertinent part that a lawyer may not share fees with a non-lawyer except:

“(3) a lawyer or law firm may compensate a non-lawyer employee or include a non-lawyer employee in a retirement plan based in whole or in part on a profit sharing arrangement.

Rule 5.4 (b) prohibits the forming of a partnership with a non-lawyer if any of the activities consist of the practice of law.

Nassau County Bar Op. 2002-3 (2002) states in part that:

“Compensation to paralegals or other non-lawyer personnel for such closings may be paid on a piece-meal basis, paying a specified amount for each closing performed. The compensation may not be directly related to the fees to be paid to the lawyer or law firm by the client for such closing services.”

See also NYSBA Op. 1079 (2015) (paralegals need not be certified and an uncertified paralegal may be described as a paralegal and the work may be billed at a “paralegal” rate).

GUIDELINE VI
DISCLOSURE OF NON-LAWYER STATUS

LAWYERS SHALL REQUIRE THAT THEIR PARALEGALS WHEN DEALING WITH CLIENTS DISCLOSE AT THE OUTSET THAT THEY ARE NOT

LAWYERS. LAWYERS SHALL ALSO REQUIRE THAT WHEN A PARALEGAL IS DEALING WITH A COURT, AN ADMINISTRATIVE AGENCY, ATTORNEYS, OR THE PUBLIC PARALEGALS SHALL DISCLOSE AT THE OUTSET THAT THEY ARE NOT LAWYERS AND DISCLOSE THE ASSOCIATION WITH THE ATTORNEY.

COMMENTARY

Disclosure of paralegal status when dealing with persons in connection with legal matters is necessary to assure that there will be no misunderstanding as to the responsibilities and role of the paralegal. Disclosure must be made in a way that avoids confusion. Common sense suggests a routine disclosure at the outset of communication. N.Y. City 884 (1974). When a paralegal is designated as **an** individual for contact, disclosure of status should be made at the time of such designation.

Therefore, a lawyer should require that the paralegal, when dealing **with** the client, disclose at the outset that the paralegal is not a lawyer. The lawyer shall also require disclosure at the outset when the **paralegal is dealing with a court, an administrative agency, attorneys or the public** the fact that the paralegal is not an attorney and his or her association *with the attorney*.

Rule 8.4(c) prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. An attorney's supervision of a paralegal must take into consideration that the paralegal's status as a nonlawyer must be known to potential and actual clients, and misleading a client either by the attorney or the paralegal as to the paralegal's status may violate the rule.

NYSBA Opinion 851 indicated that an advertisement for a law firm may feature a photograph that includes nonlegal staff as long as it is not misleading. "One way to ensure that a firm photograph including non-legal staff is not misleading would be to accompany the

photograph with a caption specifying the professional status of each person in the photograph or stating that the photo includes non-legal staff.”

Disclosure of paralegal status must be clear and unambiguous. NYSBA Op. 640 (1992) (titles employed by paralegals may not be false and misleading; attorney is responsible for ensuring that business cards of paralegals meet the correct standard; use of “paralegal” is clear, and title must clearly demonstrate that paralegal is not an attorney; use of “legal associate” “paralegal coordinator” or “legal advocate” “family law advocate” or “housing advocate” is impermissible). Paralegals business cards must specify “paralegal.” *In re Castelli*, 131 A.D.3d 29, 11 N.Y.S.3d 268 (2^d Dep’t 2015) (Three year suspension from practice for attorney for multiple violations, including allowing paralegals to use business cards that didn’t specify “paralegal”; allowing paralegal to enter into fee arrangements and retainer agreements with clients; using signature stamp to sign pleadings not checked by the attorney, as well as checks from IOLA account); *In the Matter of Neal M. Pomper*, 70 A.D. 3d 222, 889 NYS2d 868 (2^d Dep’t 2009) (respondent attorney publicly censured in New York based upon discipline imposed in New Jersey because he “sent his paralegal to a hearing with his client where the paralegal identified herself as an attorney, entered an appearance on the record, allowed herself to be addressed as counselor, and acted as an advocate for the client.”) Both the NFPA and NALA Model Codes of Ethics require that a paralegal’s title is fully and accurately disclosed at the beginning of all professional relationships. NFPA Rule 1.7; NALA Canon 5. NFPA specifically mentions the necessity for a paralegal title on business cards.

GUIDELINE VII

PROFESSIONAL DEVELOPMENT

A LAWYER SHALL PROMOTE THE PROFESSIONAL DEVELOPMENT OF THE PARALEGAL.

COMMENTARY

Professional development is important to all members of the legal team.

Rule 1.1 mandates that a lawyer provide competent representation to clients. It defines “competent representation as requiring the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Comment 6 to the rule states:

[8] To maintain the requisite knowledge and skill, a lawyer should (i) keep abreast of changes in substantive and procedural law relevant to the lawyer’s practice, (ii) keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information, and (iii) engage in continuing study and education and comply with all applicable continuing legal education requirements under 22 N.Y.C.R.R. Part 1500.

In order to assure that paralegals maintain competency, paralegals should be supported in their pursuit of opportunities for continuing legal education, including the ethical duties of lawyers, participation in *pro bono* projects and participation in professional organizations.

Both the NALA and the NFPA Model Codes of Ethics embrace continuing education for paralegals. NFPA Model Disciplinary Rule and Ethical Consideration 1.1 requires paralegals to “achieve and maintain a high level of competence” through 12 hours of continuing legal education (including 1 hour of ethics) every two year. NALA Code of Ethics and Professional Responsibility Canon 6 requires paralegals to maintain a high degree of integrity and competency through education, training, and continuing education. The NFPA Rule 1.4 also specifically requires paralegals to “serve the public interest by contributing to the improvement of the legal system and delivery of quality legal services, including pro bono public services and community service.”

GUIDELINE VIII

A LAWYER MAY INCLUDE A “MARKET RATE” CHARGE FOR THE WORK PERFORMED BY A PARALEGAL IN SETTING A CHARGE AND/OR BILLING FOR

LEGAL SERVICES.

COMMENTARY

Although the 1995 Guidelines did not address this issue, the Task Force follows the lead of the ABA Model Guidelines in confirming that lawyers may charge “market rates” for paralegal services, rather than actual costs. ABA Model Guidelines. As the ABA Model Guidelines have written:

In *Missouri v. Jenkins*, 491 U.S. 274 (1989), the United States Supreme Court held that in setting a reasonable attorney’s fee under 42 U.S.C. § 1988, a legal fee may include a charge for paralegal services at “market rates” rather than “actual cost” to the attorneys. In its opinion, the Court stated that, in setting recoverable attorney fees, it starts from “the self-evident proposition that the ‘reasonable attorney’s fee’ provided for by statute should compensate the work of paralegals, as well as that of attorneys.” *Id.* at 286. This statement should resolve any question concerning the propriety of setting a charge for legal services based on work performed by a paralegal. *See also*, Alaska Rules of Civil Procedure Rule 79 Florida Statutes Title VI, Civil Practice & Procedure, 57.104; North Carolina Guideline 7; Comment to NALA Guideline 5; Michigan Guideline 6. The *Jenkins* decision has been followed by several cases upholding paralegal fees at market rates. *See Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008); *United States v. Claro*, 579 F.3d 452 (5th Cir. 2009) and *Nadarajah v. Holder*, 569 F.3d 906 (9th Cir. 2009). In addition to approving paralegal time as a compensable fee element, the Supreme Court effectively encouraged the use of paralegals for the cost-effective delivery of services.

The legal conclusions in the ABA Guidelines have not been altered by case law in the intervening years and the Committee believes that is reasonable to adopt the ABA provision permitting lawyers to charge market rates for their paralegals. *See also* NYSBA Op. 1079 (2015) (paralegals need not be certified and an uncertified paralegal may be described as a paralegal and the work may be billed at a “paralegal” rate).

Appendix 1

RECOMMENDATIONS AND CONCLUSIONS

The Task Force supports the expanded use and role of the traditional paralegal. In 1995, the Committee wrote that it, “believes that only an attorney should be responsible for analyzing legal problems and giving legal advice. A matter may come into an office sounding in "tort" but may require an attorney's knowledge of bankruptcy, labor law or some other area with which a legal technician may not be familiar. The attorney, through his or her training and education, and under the Code of Professional Responsibility which states that the lawyer shall not take on a matter which the lawyer is not competent to handle, is better able to "see the whole picture" that may develop in the course of representation.”

This Task Force continues to believe that the finding of the 1995 committee remains sound and indeed forms the foundation of our doctrines prohibiting the unauthorized practice of law. At the same time, however, the Committee stresses that the admonition against unauthorized practice should be read in connection with the points below and above which call for some flexibility in expanding the role of paralegals to encompass broader tasks than they have historically performed. The Task Force recommends that Court rules and ethical rules be developed to encourage the expanded use of paralegals particularly in connection with efforts to serve low and moderate income clients (as discussed above).

In 1995, the Committee called for the Uniform Court Rules to be expanded, “to permit the use of paralegals for calendar calls, motions, adjournments and submissions of consent orders for disclosure.” More than 20 years later, little headway has been made on this front. While paralegals sometimes attend calendar calls and other ministerial court functions,²¹

²¹ L. Emmanuel, Guide to Dos and Don't's for Paralegals, NY State Legal Ethics Reporter (R. Minkoff Editor) (reprinting Sept. 1998 article) (<http://www.newyorklegaethics.com/guide-to-dos-donts-for-paralegals/>). Law firms with over 3000

there is no uniform rule permitting such a practice and indeed in our experience attorneys often handle ministerial appearances themselves. This Task Force reiterates the 1995 recommendation calling for paralegals to be able to handle ministerial court activities. *See* Guideline 2, *supra* (discussing the ethical use of paralegals in ministerial court activities). In 1995, The Committee also noted that, “In some communities, legal assistants perform most, if not all, of the legal work at real estate closings, without the physical presence of an attorney.” This Task Force notes that even more so than in 1995, the practice of using legal assistants for real estate closings has become an accepted part of the legal practice landscape²² and this Task Force accepts this practice, provided of course that the legal assistants working on real estate closings are appropriately supervised by licensed attorneys. *See* p. ___ Guidelines I and II, *supra* (discussing ethical issues relating to use of paralegals in real estate closings).

In short, the Task Force adheres to the view of the 1995 committee that:

[t]he expanded use of the professional traditional paralegal will benefit both client and bar. The traditional paralegal, through training, education and/or experience, has the capacity to make a greater contribution to the public. It goes without saying that some legal assistants know more about some technical aspects of practice areas than do some lawyers. While the lawyer must continue to maintain an involved relationship with clients, the paralegal can serve as a liaison and provide individual contact with the client. The client has a contact when the attorney is in court or otherwise unavailable and a relationship of trust may be developed, benefiting both public and Bar.²³

As was the case in 1995, this Task Force recommends the increased use of bar publications and CLE programs to promote the use of paralegals, such as a series of articles informing the bar about the qualifications, ability and professionalism of legal assistants. We note the concern of the 1997 committee that “Despite the considerable evidence built over many years supporting the premise that legal assistants are valuable members of the legal "team", the legal profession still fails to fully avail

attorneys collectively were contacted for the survey described in this article.

²² *Id.* <http://www.newyorklegaethics.com/guide-to-dos-donts-for-paralegals/>

²³ *See* report of the Chief Judge's Committee to Improve the Availability of Legal Services, April, 1990.

itself of the talent such individuals offer. Attorneys are still not aware of the capabilities of legal assistants. The bar must be educated that the traditional legal assistant is a true professional.” However, we believe that this concern has been ameliorated in the years since 1995, in part because of bar association programs such as those recommended in 1995. As a result, as set out above, the use of paralegals continues to increase at a rapid pace, outstripping job growth in most other sectors of the economy. *See* p. __, *supra*. Thus, while we continue to see a need for articles and programs regarding the use of paralegals and best practices in that regard, we note that considerable progress has been made in increasing the use of paralegals as a way to, among other things, address client concerns regarding the cost of legal services.

A. The Task Force Supports Continued Study of Regulation of Non-Lawyers and Recommends Against Imposition of New Regulations at this Time .

In 1995, the Committee recommended further study of regulatory alternatives, noting that the topic, “is sure to engender discussion and controversy” particularly with respect to “who would administer the regulatory scheme,” whether the scheme should be, “as comprehensive as lawyer regulation” and “whether a private entity such as the bar association, NALA or NFPA” should be involved in the regulatory scheme. ²⁴

The ABA has urged that state courts and bar associations devise “new or improved frameworks” for “licensing or otherwise authorizing providers of legal and related services,” including paralegals.²⁵ Legislation calling for mandatory regulation has been introduced in the

²⁴ 1995 Report at 44.

²⁵ The American Bar Association, in its January 2014 Report and Recommendations of the Task Force on the Future of Legal Education, specifically stated that “state supreme courts, state bar associations, admitting authorities, and other regulators should devise ... new or improved frameworks for licensing or otherwise authorizing providers of legal and related services.”⁴⁴ This should include licensing persons other than those holding law degrees to deliver limited legal services and “authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education.” TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS’N, REPORT AND RECOMMENDATIONS 3 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_ab

New York assembly, although it does not appear that such legislation has gained much traction.²⁶

National paralegal organizations have also advocated the promulgation of educational and other licensing regulations.²⁷ However, NALA, with a membership composed of more than 18,000 paralegals, through individual membership and its 90 state and local affiliated associations, opposes any mandatory regulation.²⁸ The Empire State Association of Paralegals has endorsed greater regulations.²⁹

For the reasons set out below, the Task Force at this time recommends further study of mandatory regulation as well as study of voluntary regulation by bar associations and state courts.

Numerous proposals have been offered to require, for example, licensure of paralegals, minimum education standards for paralegals, continuing legal education for paralegals, and/or ethical rules to govern paralegal conduct.³⁰ The Task Force supports the principles underlying

a_task_force.authcheckdam.pdf.) (cited in R. Zorra and Udell, March 2016).
New Roles For Non-Lawyers To Increase Access To Justice, 41 Fordham Urban L.J.. No. 4 1259 (2014)

²⁶ Bill No. 808532 (N.Y. State Assembly July 13, 2011)
http://www.assembly.state.ny.us/leg/?default_fld=&bn=A08532&term=2011&Text=Y). This legislation provides for a program to, among other things, “provide mandatory minimum standards and procedures for initial qualifications; and provide requirements for continuing education, certification, and professional conduct. It also calls for the establishment of “license application fees and license renewal fees” and the creation of an independent board to oversee paralegal regulations.

²⁷Empire State Alliance of Paralegal Associations, POSITION STATEMENT ON PARALEGAL EDUCATION STANDARDS IN NEW YORK STATE (Jan. 2006)
([https://www.paralegals.org/files/Position%20Statement%20on%20Regulation%20\(approved%2016-01\).pdf](https://www.paralegals.org/files/Position%20Statement%20on%20Regulation%20(approved%2016-01).pdf)) CITE TO NATIONAL PARALEGAL ORGANIZATIONS THAT HAVE ADVOCATED FOR REGULATIONS . . .

²⁸C. Durgin, Getting Legal with Paralegals: A Look at State Regulations, 16 Business Law Today No. 3 (American Bar Association Business Law Section Jan./Feb. 2007 <https://apps.americanbar.org/buslaw/blt/2007-01-02/durgin.shtml>)

²⁹Empire State Alliance of Paralegal Associations, POSITION STATEMENT ON PARALEGAL EDUCATION STANDARDS IN NEW YORK STATE (Jan. 2006)
(http://empirestateparalegals.org/yahoo_site_admin/assets/docs/ESAPA_Paralegal_Education_Position_Paper1.114183058.pdf)

³⁰ ESAPA and its member Associations take the following position on education qualifications for entry into the paralegal profession in New York State on or after the date of adoption of this Position Statement:

- A. An individual entering the paralegal profession must possess:
 1. a post bachelor’s degree paralegal certificate*; or
 2. bachelor’s degree (major, minor or concentration) in paralegal studies; or
 3. associates degree in paralegal studies.

the proposed regulations, but does not believe coercive regulations are necessary at this time. Rather, the Task Force calls for study of such regulations and an increased emphasis on voluntary certification standards.

1. Mandatory versus Voluntary Regulation

In 1995, the Committee predicted that mandatory regulation of paralegals would encounter widespread opposition. The Committee wrote as follows:

...it can be easily concluded that mandatory across-the-board regulation will be opposed by both lawyers and legal assistants. Legitimate concerns about the time and cost of training, refresher courses, examination fees and annual registration fees will be raised. Moreover, across-the-board mandatory regulation is likely to increase the cost of legal services to some extent and possibly decrease the "supply" of non-lawyer practitioners. Many attorneys and legal assistants, for their own individual reasons, may prefer the *status quo ante*.

This prediction largely proved true. Only California has adopted regulations governing paralegals. Paralegals are regulated by statute under CA Business & Professions Code 6450 et. seq. requiring mandatory compliance with educational standards, and continuing education. In at least Florida, New Hampshire, Wisconsin³¹, New Jersey, Washington Indiana³², South Carolina,³³ and South Dakota³⁴, proposals to implement some form of mandatory regulation of paralegals failed.³⁵ In many other states, such proposals never received any serious debate and

³¹In the Matter of Licensure and Regulation Paralegals, No. 04-03 (Sup. Ct. Wis. Apr. 27, 2008) https://www.paralegals.org/files/SC_WI_Decision_4_7_08.pdf

³² In September 2008, the Indiana Supreme Court rejected Proposed Rule 2.2, which proposed the creation of the Indiana Registered Paralegal program. *See* NFPA Regulatory Review Committee, National Federation of Paralegal Associations, Paralegal Regulation by State (updated 8/17) (https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf).

³³ In 2003 the South Carolina Alliance of Legal Assistant Associations submitted a proposal for regulation of paralegals to the South Carolina Bar Association's Board of Governors which included a definition, educational standards, code of ethics and guidelines for paralegal utilization. The Bar Association's House of Delegates tabled the proposal.

³⁴ In December 2006, the State Bar submitted proposed changes to SDCL 16-18-34 to the Supreme Court to revise the definition of paralegal and set minimum qualifications for paralegals. The Supreme Court held hearings in 2007 on the proposal, however, the proposal was rejected. NFPA Regulatory Review Committee, National Federation of Paralegal Associations, Paralegal Regulation by State (updated 8/17) (https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf)

³⁵ *Id.* (https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf). In April 2006 the Florida bar defeated a bill that would have placed paralegals under the regulatory oversight of the state Department of business and Professional Regulation. *Id.* st 9. Legislation in Hawaii in 2017 was introduced to determine the feasibility of licensure or certification for paralegals. These proposals did not receive a hearing in the legislative committee to which the proposal was referred. *Id.* at 10. The Indiana Supreme Court in 2008 rejected the creation of an Indiana Registered Paralegal Program. The New

did not generate any meaningful votes. Montana,³⁶ Hawaii, Oregon,³⁷ were examples of this.

Some of the competing considerations were discussed in the New Jersey Supreme Court's opinion on paralegal regulation, rendered after a series of hearings involving many paralegal and attorney groups.

The Committee recommended that the Court establish a licensing system for all paralegals. Recognizing that paralegals have come to their positions through various educational and experiential routes, the Committee recommended that a multi-tiered licensing system be created. Plenary licensure would be available to those who completed an American Bar Association-approved paralegal program and restricted licensure would be available for paralegals trained in law firms. A "grandfather" clause was also included in the recommendation.

Some paralegals and paralegal associations endorsed the Committee's recommendations as enhancing the professionalism of the profession and the degree of respect accorded to paralegals. Other paralegal organizations, the American Bar Association, and the New Jersey State Bar Association viewed the regulatory proposal as unnecessary. The ABA noted that its review of paralegal educational programs was not intended to serve as a formal accreditation service. The NJSBA urged the Court to forego establishing a regulatory system within the Judiciary. In lieu thereof, the Association urged that the Court focus on the responsibility of lawyers to oversee the work of paralegals. In reviewing the Committee's discussion of this recommendation and the concerns it generated, the Court accepted the underlying premise; that is, that its regulation of paralegals should be conducted in a form that best serves the needs of the public, the bar, and the Judiciary. Pending future evaluations of the profession, the Court has concluded that direct oversight of paralegals is best accomplished through attorney supervision rather than through a Court-directed licensing system. As noted below, the Court agrees that the obligations attorneys have as paralegal supervisors need to be set forth in greater detail.

[Committee] Recommendation 3: Persons who seek to be practicing paralegals in New Jersey should be required to demonstrate compliance with minimum hour and course content requirements of paralegal programs offered by American Bar Association-approved paralegal educational programs.

Although the Court would encourage those who seek to become paralegals to engage in a broad-based educational program such as that recommended by the American Bar

Hampshire House in 2003 killed legislation which would have defined paralegals and legal assistants. In 1999, the NJ Supreme Court denied a proposal calling for the mandatory licensure of paralegals. *Id.* at 20. In 2007 the SD Supreme Court rejected a proposal to set minimum qualifications for paralegals. *Id.* at 28. In several states proposals died at either the state bar or legislative levels. Vermont, Utah. *Id.* at 31.

³⁶ In September of 1994, the Montana State Bar Board of Trustees voted to petition Montana Supreme Court to adopt rules regulating paralegals which included education and testing requirements. Supreme Court No. 94-577 was denied. https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf.

³⁷ 1997: HB 3082 was introduced addressing the licensure of paralegals. It was found that the bill was not complete with regard to educational requirements. The bill was amended and resubmitted where it died in committee

Association, it recognizes that there are many paths available to develop the skills necessary to perform with competence as a paralegal. The paralegal community and organized bar should work together to identify and promote educational programs that will enhance the performance of current and future paralegals.³⁸

At this time, the Task Force does not believe that efforts at mandatory regulation would be more politically palatable in New York than they have been in the numerous other states that have defeated efforts at such reforms. Thus, the Task Force believes that the appropriate course at this time is to redouble the Bar Association's efforts to study the issue, preferably under the auspices of a new NYSBA Paralegal Division (see Part __, *infra*).

While further study might generate evidence that paralegals are not being adequately supervised and/or that they are often not qualified for the roles they fill, the Task Force is unaware of such research at this point. In the absence of such evidence, we are reluctant to recommend stringent regulations that would limit the career options of those who seek to become paralegals. We recognize that at some point, NYSBA might generate sufficient research and analysis to make a case for regulation sufficiently compelling to overcome political resistance and to warrant the intrusion upon the career paths of potential paralegals. The Task Force does not believe that such a case has yet been made and thus would defer efforts at mandatory regulation in favor of support for voluntary regulatory programs such as those described below.

2. Focus on Voluntary Regulation.

The Task Force encourages further study of and further joint efforts between and among NYSBA, the New York State courts and voluntary paralegal certification programs, including those maintained by the NFPA and NALA. Subject to further study, it appears to the Task Force that these rigorous programs potentially provide a cost-effective existing framework for improving paralegal training and certification without the need for further regulation.

³⁸ New Jersey Rejects Legal Assistant Licensing Recommendations, *Utah B.J.*, DECEMBER 1999, at 22, 23

At the same time that mandatory regulatory proposals were undergoing defeat, many governments or state courts adopted voluntary paralegal certification programs, including such states as Florida³⁹, Texas, Kentucky,⁴⁰ South Carolina, North Carolina and Utah.⁴¹ A number of state bar associations have also adopted voluntary certification programs. In these instances, both the court and bar association programs generally permit paralegals to call themselves “certified_[MP1]” if they meet requirements such as a written examination or certain educational requirements according to voluntary organizations such as NALA and NFPA. _[MP2] states include Florida, North Carolina, Ohio, and Indiana.⁴² Wisconsin’s bar association has also approved the concept of such a program. Notably, some states have expressly incorporated the rules of private certification organizations. *See* Oklahoma (adopting certification examinations administered by the National Association of Legal Assistants or the National Federation of Paralegal Associations).⁴³

A number of private organizations maintain robust voluntary licensing programs. About a thousand paralegal educational programs are operating, nearly 300 of which are approved by the ABA, and about 300 of which are members of the American Association for Paralegal Education. For example, NALA maintains CLA/CP examination is a two-day comprehensive exam with more than 1,000 questions based on federal law and procedure. More than 13,000

³⁹ https://www.paralegals.org/files/FLorida_Paralegal_Regulation_Supreme_Court_Order_06_1622.pdf

⁴⁰ In 2010, Kentucky adopted the Certified Kentucky Paralegal Program –launched in Fall 2010 with “the purpose of . . . implement[ing] Kentucky Supreme Court Rule 3.700.

⁴¹ Lynn Crossett, Regulation of the Paralegal Profession and Programs for Limited Practice by Non-Lawyers, Prof. Law., 2017, at 95, 98–112. https://www.paralegals.org/files/REGULATION_CHART_10-14final.pdf

⁴² <https://www.floridabar.org/about/frp/>
<https://www.nccertifiedparalegal.gov/> (North Carolina);
<https://www.ohiobar.org/cle-certification/certification/paralegal-certification/> (Ohio);
<https://www.inbar.org/page/RegisteredParalegal> (Indiana);

⁴³ NEPA’s model regulations appear at https://www.paralegals.org/files/Model_Plan_for_Regulation.pdf
arkansa

paralegals have obtained the CLA/CP credential. Continuing education is required to maintain the credential. NFPA's Paralegal Advanced Competency Exam (PACE), established in 1994, provides a competency evaluation of paralegals. PACE is a four-hour computer-generated exam. An applicant successfully passing the exam is entitled to the "Registered Paralegal" credential but must obtain continuing education to maintain it. The NFPA is an umbrella organization of state and local paralegal associations with more than 50 affiliated local associations, representing about 11,000 paralegals. At least 600 paralegals have earned the Registered Paralegal designation that is granted to those who pass the PACE.

Surveys show that well over half of paralegals hold a baccalaureate degree and even more have some formal paralegal education.

The Task Force recommends that NYSBA and its proposed Paralegal Division promote the voluntary programs run by organizations such as NALA and NFPA, educating attorneys and potential clients as to the value of the certifications and other services provided by these organizations. Given the BLS projections for increased use of paralegals in the future, it appears likely that voluntary efforts to promote training and certification of paralegals should gain traction, particularly if such efforts obtain NYSBA's imprimatur.

B. The Task Force Reaffirms NYSBA's Commitment to Active Enforcement of the U.P.L

As the Committee wrote in 1995:

Statutes preventing the practice of law by those unqualified to provide legal services not only safeguards against harm to the public, but enhances the image of attorneys who are licensed to practice. Those who provide legal services under the guise of non-lawyers, such as disbarred lawyers, document preparers or unregulated legal technicians, are wholly unaccountable for their malfeasance.

While the Task Force recommends analysis of efforts to provide paralegals with an increased role, particularly in the service of indigent and moderate means clients, the Task Force adheres to the Committee's recommendations that NYSBA take an active role in remaining vigilant for, and

reporting, instances of unauthorized practice to appropriate authorities, including Grievance Committees, where necessary.

C. The Task Force Recommends Consideration and Implementation of Alternative Delivery Systems for Lawyers' Services.

The 1995 report discussed and recommended consideration and implementation of alternative delivery systems in an effort to increase access to justice for New Yorkers of modest and moderate means. This Task Force endorses the conclusion of the 1995 Report that “Viable alternatives to the traditional delivery system should be considered and implemented to protect New Yorkers from the unfortunate consequences which may arise if legal services are provided without attorney involvement.” However, we do not address this issue comprehensively as it is beyond the scope of this report, which is focused on the use of paralegals. However, we note that most of the concepts discussed in the 1995 report have not been adopted to this day and that these concepts remain potentially sound ideas for delivering legal services to clients of low and moderate means. The 1995 report examined: 1) prepaid legal plans; 2) modest means panels of attorneys who are willing to provide legal services at reduced rates to screened clients who meet income qualifications for such services; 3) pro se Assistance Programs and Clinics in certain jurisdictions to assist unrepresented litigants; and 4) programs to match under-utilized attorneys with clients with unmet legal needs. This list is not intended to be exhaustive and further study will be necessary.

D. The Task Force Recommends Creation of a Paralegal Division

The Task Force recommends that NYSBA create a Paralegal Division through which paralegals can become **non-voting** members of NYSBA and participate in NYSBA’s activities, but particularly in programs aimed at the enhancement of the paralegal profession. The Task Force notes that the American Bar Association has such a division. The state bars of a number

of states have paralegal membership categories and/or sections or divisions. These include, at least, Connecticut, Montana, New Mexico, Nevada, Texas, Florida, Indiana, Michigan, North Carolina, Utah, Vermont, Massachusetts, New Jersey, and Ohio.⁴⁴ Such a division would provide a means for paralegals to learn from and contribute to the organized bar. Moreover, a Paralegal Division could provide guidance for paralegals who are considering law school attendance and the practice of law. In addition, the Paralegal Division could focus on researching some of the open questions presented in this Report regarding the need for further regulation or certification

⁴⁴ New Mexico--

https://www.nmbar.org/nmstatebar/AboutUs/Divisions/Paralegal_Division/Nmstatebar/About_Us/Paralegal_Division/Paralegal_Division.aspx?hkey=7fea2437-2fa2-4acd-bef2-6d8e1d012f43

Nevada --https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Jan2018_

Michigan -- <http://connect.michbar.org/paralegal/home> (Paralegal/Legal Assistant Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, this site, public service programs, and publication of a newsletter. Membership in the Section is open to qualified legal assistants and to all members of the State Bar of Michigan).

Ohio --The Ohio State Bar Association (OSBA) has established a credentialing program for paralegals. Paralegals interested in earning a certification good for four years must meet educational standards stipulated by the bar association, have sufficient experience and pass an examination. The first exam was offered in March 2007.

Montana -- <https://www.montanabar.org/store/ViewProduct.aspx?id=2102697>

Nevada -- <https://www.nvbar.org/member-services-3895/sections/paralegal-division/>

North Carolina --<https://www.ncbar.org/join-ncba/applications/>

Texas--

<https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MembershipInformation/ParalegalDivision/default.htm>

Indiana -- <https://www.inbar.org/page/paralegals>

Utah--<http://paralegals.utahbar.org/index.php/Bylaws>

Connecticut--<https://members.ctbar.org/page/Paralegals>

Vermont --

[https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717\(1\).pdf](https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717(1).pdf)

Massachusetts --<https://www.massbar.org/membership/dues-structure-and-rates>

New Jersey --<https://community.njsba.com/paralegalspecialcommittee/home?ssopc=1>

of paralegals.

Appendix 2

NY RULES OF PROFESSIONAL CONDUCT

Appendix 3

**ABA MODEL GUIDELINES FOR THE UTILIZATION OF PARALEGAL
SERVICES (2018)**

https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelin

[es.pdf](#)

Appendix 4

NFPA AND NALA MODEL ETHICAL GUIDELINES

NFPA: [https://www.paralegals.org/files/Model Code of Ethics 09 06.pdf](https://www.paralegals.org/files/Model_Code_of_Ethics_09_06.pdf)

NALA: <https://www.nala.org/certification/nala-code-ethics-and-professional-responsibility>

Appendix 5

ABA REPORT ON THE FUTURE OF LEGAL SERVICES (2016)

file:///Users/mphillip/Downloads/2016FLSReport_FNL_WEB.pdf

Appendix 6

ABA RESOLUTION 105 (FEBRUARY 8, 2016)

<https://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/105.pdf>

Appendix 7

**NATIONAL FEDERATION OF PARALEGAL ASSOCIATION (NFPA) REPORT ON
PARALEGAL REGULATION BY STATE (2017)**

<https://www.paralegals.org/files/2017-08-24%20Regulation%20by%20State%20FINAL.pdf>

Appendix 8

**AMERICAN BAR FOUNDATION AND THE NATIONAL CENTER FOR STATE
COURTS – ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND
RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT**

NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECT (DECEMBER 2016)

<https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/387>

Appendix 9

**NEW YORK STATE BAR ASSOCIATION MEMORANDUM (HOUSE OF
DELEGATES AGENDA ITEM #11)**

<http://www.nysba.org/workarea/DownloadAsset.aspx?id=55515>



COMMITTEE ON LEGAL AID

May 30, 2019

TO: The Task Force on the Role of Paralegals

The New York State Bar Association's Committee on Legal Aid ("COLA") supports the Task Force on the Role of Paralegals Report and Recommendations dated March 2019 with the following comments/additions.

The COLA has grave concerns about legislation drafted this year by the New York State Office of Court Administration (OCA) which seeks to amend the judiciary law to allow for the employment of housing court advocates and consumer court advocates to assist indigent persons in certain court proceedings under attorney supervision.

Most significantly, the COLA believes, if enacted, this proposal will significantly decrease the incentive to hire housing attorneys under the universal access/right to counsel legislation enacted in New York City and gaining momentum in other counties in New York State. The results for tenants in New York City of the universal access legislation is a significant decrease in evictions for low income households residing in affordable housing. Additionally, there is no funding attached to the proposed OCA legislation and legal services providers will not have the resources or motivation to hire, train and adequately supervise non-attorneys to avoid malpractice. Importantly, advocates are not attorneys and will not be able to provide the full range of knowledge, skill and experience necessary to ensure optimal results for low income tenants and consumer defendants. Moreover, non-attorneys do not have the same professional ethical obligations as attorneys. For this reason, and because of the significant risk that they would inadvertently waive important defenses or compromise valid claims of low-income litigants we should not permit non-attorneys to draft, sign and file legal papers under their own signatures. On the consumer side, the requirement that a paralegal be employed by a non-profit

organization is not enough to protect defendants from deceptive practices, as unscrupulous operators charging high prices for sham services sometimes disguise themselves as nonprofit organizations in order to evade detection and regulation; the proposed legislation will encourage the proliferation of such scams. Finally, the COLA believes this is a dangerous precedent to set and will result in expansion of non-attorney representation of low-income litigants in additional court matter involving high stakes basic needs cases to the detriment of low-income households.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Sergio Jimenez', with a stylized, cursive script.

Hon. Sergio Jimenez
Chair, Committee on Legal Aid