

## TABLE OF CONTENTS

ABBREVIATIONS .....	ii
PRELIMINARY STATEMENT .....	1
DEFINITION .....	1
VALUE OF LEGAL ASSISTANTS .....	1
PURPOSE OF THESE GUIDELINES .....	2
GUIDELINE I: LAWYERS' PROFESSIONAL RESPONSIBILITY .....	3
GUIDELINE II: UNAUTHORIZED PRACTICE OF LAW .....	5
GUIDELINE III: AUTHORIZED PRACTICE .....	6
GUIDELINE IV: CONFIDENTIALITY & CONFLICT OF INTEREST .....	8
GUIDELINE V: PROFESSIONAL INDEPENDENCE OF LAWYERS.....	10
GUIDELINE VI: DISCLOSURE OF NON-LAWYER STATUS.....	11
GUIDELINE VII: PROFESSIONAL DEVELOPMENT .....	12
<b>Appendix 1</b> Recommendations and Conclusions .....	13
Final Report, New York State Bar Association <i>Ad Hoc</i> Committee on Non-Lawyer Practice, May 1995.	
<b>Appendix 2</b> National Association of Legal Assistants .....	25
<i>Code of Ethics and Professional Responsibility.</i> National Federation of Paralegal Associations <i>NFPA Model Code of Ethics and Professional Responsibility.</i>	
<b>Appendix 3</b> Judiciary Law of the State of New York .....	33
<i>Section 478: Practicing or appearing as attorney-at-law</i> <i>without being admitted and registered.</i> <i>Section 484: None but attorneys to practice in state.</i>	
<b>Appendix 4</b> Federal Administrative Agencies .....	37
Before Which Non-Lawyers May Appear and the Applicable Regulations. (Compiled from Results of the 1984 Survey of Non-Lawyer Practice Before Federal Administrative Agencies, ABA Standing Committee on Lawyers' Responsibility for Client Protection and the ABA Center for Professional Responsibility, February 1985.)	

**Appendix 5** New York County Lawyers’ Association Committee .....41  
onLegal Assistance, Survey of NYC and NYS Agencies, 1993.

**Appendix 6** References to Ethics Opinions .....51  
Relating to Utilization of Legal Assistants.

**ABBREVIATIONS**

**ABA # (19xx)** American Bar Association Committee on Ethics and Professional Responsibility, Opinion # issued in 19xx.

**Association or NYSBA** New York State Bar Association.

**Code** Code of Professional Responsibility of the NYSBA effective January 1, 1970, as amended.

**Canon** Canon of the Code.

**EC** Ethical Consideration of the Code.

**DR** Disciplinary Rule of the Code.

**N.Y. State # (19xx)** New York State Bar Association Committee on Professional Ethics, Opinion # issued in 19xx.

**N.Y. City # (19xx)** The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Opinion # issued in 19xx.

**N.Y. County # (19xx)** New York County Lawyers’ Association Committee on Professional Ethics, Opinion # issued in 19xx.

**NassauCounty # (19xx)** Bar Association of Nassau County Committee on Professional Ethics, Opinion # issued 19xx.

## PRELIMINARY STATEMENT

### DEFINITION

A legal assistant/paralegal is a person who is qualified through education, training or work experience to be employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function that involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, that requires a sufficient knowledge of legal concepts such that, absent such legal assistant/paralegal, the attorney would perform the task. The terms “legal assistant” and “paralegal” are synonymous and are not to be confused with numerous other legal titles which have proliferated with the public and within the legal community. Throughout the text of the following Guidelines, the term “legal assistant” will be used; however it is not intended to exclude nor infer a preferred status over the term “paralegal.”

### VALUE OF LEGAL ASSISTANTS

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 access 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.

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 ethics 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.

## PURPOSE OF THESE GUIDELINES

The New York State Bar Association, in 1976, recognized the importance of legal assistants in the delivery of legal services by adopting the **Guidelines for the Utilization by Lawyers of the Services of Legal Assistants**. It has become necessary to restructure and update these guidelines for clarity and to reflect recent ethics opinions and court decisions.

The following guidelines revise those adopted by the House of Delegates in 1976 and supplement the Code of Professional Responsibility as applied to practicing with legal assistants. These guidelines are intended to assist attorneys in understanding the role of legal assistants in the delivery of high quality, cost-effective legal services to the public in accordance with the Code of Professional Responsibility, statutes, court rules and decisions, rules and regulations of administrative agencies, and opinions rendered by the attorney general and committees on professional ethics.

It is recognized that these Guidelines are not static but are subject to modification due to revisions in statutes, rules or regulations, or by reason of new opinions of courts or relevant bar association committees. 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 LEGAL ASSISTANT TO PERFORM SERVICES IN THE REPRESENTATION OF A CLIENT PROVIDED THE LAWYER:

- (A) RETAINS A DIRECT RELATIONSHIP WITH THE CLIENT;
- (B) SUPERVISES THE LEGAL ASSISTANT'S PERFORMANCE OF DUTIES;  
AND
- (C) REMAINS FULLY RESPONSIBLE FOR SUCH REPRESENTATION, INCLUDING ALL ACTIONS TAKEN OR NOT TAKEN IN CONNECTION THEREWITH BY THE LEGAL ASSISTANT, EXCEPT AS OTHERWISE PROVIDED BY STATUTE, COURT RULE OR DECISION, ADMINISTRATIVE RULE OR REGULATION, OR BY THE CODE OF PROFESSIONAL RESPONSIBILITY.

### **COMMENTARY**

EC 3-6 recognizes the value of utilizing the services of legal assistants, but provides certain conditions for such employment, *viz*:

A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

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, nor is the language of EC 3-6 to be construed as contradict-

ing any statutes, rules or administrative regulations which permit representation by persons who are not attorneys. 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). An attorney has the further responsibility to instruct the legal assistant regarding ethics.

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 Code of Ethics and Professional Responsibility and Model Standards and Guidelines adopted by the 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.

Legal assistants, though not members of the bar and not technically bound by the Code of Professional Responsibility, have recognized the need for adherence to ethical guidelines. The foremost national organizations of legal assistants, NALA and NFPA, have adopted a Code of Ethics and Professional Conduct which incorporate the Professional Code of Responsibility for the applicable jurisdiction and go beyond. These are appended hereto as Appendix 2. The study of ethics is also included in all legal assistant educational programs that are approved by the ABA.

## GUIDELINE II

### UNAUTHORIZED PRACTICE OF LAW

A LAWYER SHALL NOT ASSIST A LEGAL ASSISTANT 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 Code of Professional Responsibility 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 assistant, who violates the statute may be punished for criminal contempt and that conduct may be enjoined. *See* Judiciary Law, § 750(B), § 476-a, 476-b.

The Code of Professional Responsibility provides in Canon 3 that “[a] lawyer should assist in preventing the unauthorized practice of law.” Furthermore, DR 3-101(A) mandates that “[a] lawyer shall not aid a non-lawyer in the unauthorized practice of law.”

There is no all-inclusive definition of the phrase “practice of law.” It has been referred to as an act requiring the exercise of “independent professional legal judgment.” N.Y. State 304 (1973).

A legal assistant may not represent a client in court, give legal advice or set legal fees. However, depending on court rule, a legal assistant 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) (a 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, “an independent contractor with supervision by and/or accountability to a lawyer,” satisfies existing ethical rules which require the direct supervision of an attorney.

## GUIDELINE III

### AUTHORIZED PRACTICE

A LEGAL ASSISTANT 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 legal assistant 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, Title 5, U.S.C. § 555(b), 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. A partial listing of Federal agencies that provide for non-lawyer representation is attached hereto as Appendix 4.<sup>1</sup>

---

1 In its OCCUPATIONAL OUTLOOK HANDBOOK (1994-95 edition), the U.S. Department of Labor describes the duties of legal assistants as follows:

Paralegals generally do background work for lawyers. To help prepare cases for trial, paralegals investigate the facts of cases to make sure that all relevant information is uncovered. Paralegals may conduct legal research to identify the appropriate laws, judicial decisions, legal articles and other materials that may be relevant to clients' cases. After organizing and analyzing all the information paralegals may prepare written reports that attorneys use to decide how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings, to be filed with the court, obtain affidavits and assist the attorneys during trials. Paralegals also keep files of all documents and correspondence. . . . They help to prepare tax returns and plan estates. Some paralegals coordinate the activities of the law office employees and keep the financial records of the office.

Many New York State agencies permit non-lawyer advocacy pursuant to statute and regulation. One list compiled by the New York County Lawyers' Association is attached hereto as Appendix 5.

Several bar associations have considered what actions may be delegated to a legal assistant. 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) (an 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. City 884 (1974); N.Y. State 44 (1967).

## 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 LEGAL ASSISTANT AND TAKE APPROPRIATE MEASURES TO AVOID POTENTIAL CONFLICTS OF INTEREST ARISING FROM EMPLOYMENT OF LEGAL ASSISTANTS.

### COMMENTARY

DR 1-104 (Responsibilities of a Supervisory Lawyer) imposes responsibility for non-lawyer conduct on the supervising lawyer when the lawyer ordered, knew or should have known of the conduct at the time when its consequences could be avoided or mitigated, and the lawyer fails to take reasonable remedial action. Thus, the supervising lawyer must ensure that the conduct of the non-lawyer in no way compromises a client's confidentiality or secrets and that no conflict of interest will arise therefrom.

**Confidentiality:** DR 4-101(D) provides, in part, that “[a] lawyer shall exercise reasonable care to prevent his/her employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client.” This obligation is emphasized in EC 4-2, which provides:

It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non-lawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of clients may be preserved.

*See also* N.Y. City 1995-11 (lawyer responsible for maintaining confidentiality should sensitize non-lawyers to pitfalls) and 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:** The avoidance of, or even the appearance of, conflict of interest is embodied throughout the Code of Professional Responsibility. Lawyers should be attentive to these issues and should sensitize their non-lawyer staff to the pitfalls and develop mechanisms for prompt detection of potential conflict of interest. *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 the Utilization of Legal Assistant Services" (1991) addresses a lawyer's responsibility as follows:

A lawyer must make reasonable efforts to ensure that a legal assistant's conduct is compatible with the professional obligations of the lawyer. Model Rule 5.3. These professional obligations include the duty to exercise independent professional judgment on behalf of a client, "free of compromising influences and loyalties." ABA Model Rules 1.7 through 1.13. The guideline intentionally speaks to other employment rather than only past employment, since there are instances where legal assistants 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 a legal assistant may have a financial interest (*i.e.* as a stockholder, trust beneficiary or trustee . . . ) that would conflict with the client's in the matter in which the lawyer (and/or legal assistant) has been employed.

Legal assistants are bound to inform the supervising attorney of any interest that could result in a conflict of interest or even give the appearance of a conflict.

If a conflict arises, it may be possible to isolate the legal assistant. To the extent that such a mechanism is appropriate for a lawyer, it should be appropriate for a legal assistant. The American Bar Association takes the position that "an ethical wall will allow legal assistants who are in the possession of confidential client information to accept employment with a law firm opposing the former client so long as an ethical wall is observed and effectively screens the non-lawyer from confidential information." ABA Informal Opinion 1526 and NFPA publication, "The Ethical Wall — Its Application to Paralegals" (1990). See also DR 9-101 and Canon 5.

## **GUIDELINE V**

### **PROFESSIONAL INDEPENDENCE OF LAWYERS**

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

### **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). This guideline implements the express provisions of DR 3-102 and DR 3-103, which provide:

DR 3-102. A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

1. An agreement by a lawyer with his or her firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.
2. A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.
3. A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103. A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

## **GUIDELINE VI**

### **DISCLOSURE OF NON-LAWYER STATUS**

A LAWYER SHALL REQUIRE THAT A LEGAL ASSISTANT, WHEN DEALING WITH THE CLIENT, DISCLOSE AT THE OUTSET THAT THE LEGAL ASSISTANT IS NOT A LAWYER. THE LAWYER SHALL ALSO REQUIRE SUCH DISCLOSURE AT THE OUTSET WHEN THE LEGAL ASSISTANT IS DEALING WITH A COURT, AN ADMINISTRATIVE AGENCY, ATTORNEYS OR THE PUBLIC IF THERE IS ANY REASON FOR THEIR BELIEVING THAT THE LEGAL ASSISTANT IS A LAWYER OR ASSOCIATED WITH A LAWYER.

### **COMMENTARY**

Disclosure of legal assistant 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 legal assistant. 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 legal assistant is designated as the individual for contact, disclosure of status should be made at the time of such designation.

## **GUIDELINE VII**

### **PROFESSIONAL DEVELOPMENT**

A LAWYER SHOULD PROMOTE THE PROFESSIONAL DEVELOPMENT  
OF THE LEGAL ASSISTANT.

#### **COMMENTARY**

Professional development is important to all members of the legal team. EC 6-2 provides:

A lawyer is aided in attaining and maintaining competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in a particular area of law, and by utilizing other available means. The lawyer has the additional ethical obligation to assist in improving the legal profession, and may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of younger associates and the giving of sound guidance to all lawyers who consult the lawyer. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and personally meet those standards.

Legal assistants should be provided with opportunities for continuing legal education, participation in *pro bono* projects and participation in professional organizations.

## **APPENDIX 1**

Recommendations and Conclusions,  
*Final Report,*  
New York State Bar Association  
*Ad Hoc* Committee  
on Non-Lawyer Practice  
May 1995

## APPENDIX 1

### VI. RECOMMENDATIONS AND CONCLUSIONS

#### **A. The Committee Supports the Expanded Use and Role of the Traditional Paralegal as an Approach Preferable to the Recognition of the Legal Technician.**

*1. The Committee 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.

For instance, if an Executrix under a will comes into the office to probate the will, she may have to be counseled, in addition to collecting and accounting for assets and payment of debts, in the following activities: selling real property (release of liens, transfer of property, possible partition action); bankruptcy of borrower to whom decedent lent money; after born children contesting the will; etc.

While a traditional legal assistant should not independently advise a client concerning legal rights and duties (NYSBA Ethics Opinion 44 [1967]), the chances of such advice-offering increase dramatically with the legal technician. So long as the attorney is present in the relationship, the client may be counseled by the attorney as to his or her rights and responsibilities.

*2. The Committee recommends that court rules and ethical rules be developed to encourage the expanded use of the traditional paralegal.*

In some courtrooms around the State, legal assistants are allowed to answer calendar calls and submit affidavits of engagement or unopposed motions; in others they are not. The Uniform Court Rules should be expanded to permit the use of paralegals for calendar calls, motions, adjournments and submissions of consent orders for disclosure.

For example, if a court requires the presence of an individual in the trial assignment part pending assignment to a nonjury part or for jury selection, the legal assistant can perform these responsibilities in lieu of a lawyer. The result would be cost savings to the client and better use of the attorney’s

time, which can be spent working on other legal matters. While this is permitted in some localities, elsewhere it is not.

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. While the Committee has not attempted to assess the feasibility or desirability of any particular localized practices, we urge NYSBA, perhaps under the leadership of the LOEM Committee and with the assistance of the Ethics Committee, to review existing ethical guidelines with a view towards expanding the use and role of legal assistants in a more uniform manner statewide.

*3. The Committee believes that the 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.

Fiscally, the use of paralegals makes sense. In addition, the United States Supreme Court has stated that “reasonable attorney’s fees” include compensation for a paralegal’s time on work of a nonclerical nature.<sup>2</sup>

The expanded use of traditional legal assistants also presents an opportunity to service poor and lower middle income persons. As explained by the Chief Judge’s Committee to Improve the Availability of Legal Services (otherwise known as the “Marrero Committee”):

Certified paralegals, under the supervision of attorneys, are capable of performing many vital functions such as interviewing, screening, research and drafting. Many perform similar work in private law firms and could help relieve the workload of attorneys in legal services programs. Recruitment and training of paralegals can be achieved under the auspices of existing legal services organizations and bar associations. Further, the increased use of traditional paralegals may help reduce the cost of legal services, thereby helping to serve those people who cannot afford lawyers’ fees.<sup>3</sup>

---

2 *Missouri v. Jenkins*, 491 U.S. 274 (1989).

3 See report of the Chief Judge’s Committee to Improve the Availability of Legal Services, April 1990.

Indeed, these expectations have been partially realized in New York. For example, in Onondaga County, legal assistants have been an integral part of *pro bono* projects in housing court, will clinics, and simple divorce proceedings. Similar service is being provided across the state in various *pro bono* programs. These are being provided by volunteer legal assistants with no formal “obligation” to do so.

*4. The Committee 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.*

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 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.

Articles should be written in NYSBA publications about the utilization and role of legal assistants. Economic benefits to the attorney without compromising quality should be stressed, as well as benefits to the client.

In addition, CLE and LOEM programs on the state and local bar association level should be offered on a more frequent basis for legal assistants and for attorneys. The Nassau Academy of Law, for instance, has given programs in which the attorney and paralegal spoke as a team on various substantive topics, reinforcing the image of the paralegal as a professional.

**B. The Committee Supports Continued Study of Regulation of Non-Lawyers and Recommends Against Imposition of a New System of Regulation at This Time.**

Although there has been considerable study of various forms of regulation in other jurisdictions, in the opinion of the Committee, there is no clearly superior form of proposed regulation. The following points highlight the major issues related to regulation.

*1. Need to protect the public.*

Of those jurisdictions that have surveyed or studied the topic, there is uniform consensus that consumers are accessing the justice system without the aid of lawyers. Moreover, such activity is on the increase. Frequently, the consumer fares well. However, there are many instances when grave harm befalls the consumer and there is little or no recourse to be had. Such harm is most prevalent in the areas of family law (divorces), immigration law, bankruptcy, consumer law, and landlord/tenant practice.

It is possible that much of this harm can be eliminated by a regulatory system that makes affordable legal services available to those consumers who now seek services from non-lawyers. Usually, the reason for avoiding attorney representation is economic.

Even regulation, however, cannot cure the fundamental problem associated with the degree of knowledge and experience that is necessary to render competent legal advice. For any particular set of facts there may be other rights, more appropriate remedies, or opportunities involved than are presented by the initial inquiry. A lawyer is trained to recognize these. Therefore, it is extremely difficult to predict when a lawyer will never be needed, regardless of the regulatory system.

### *2. Mandatory versus voluntary regulation.*

Legal assistants will be the principal profession affected by regulation. In fact, depending upon the definitions and scope of any specific regulatory scheme, legal assistants may be the only profession affected. When one considers the current status of the legal assistant profession and the wide disparity of education, experience and function of legal assistants, 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*.

On the other hand, a regulatory scheme that enhances the role of non-lawyer practitioners will attract the interest of many legal assistants. If the costs of the regulatory scheme are properly controlled, such individuals will ultimately be in a position to reduce the cost of some legal services by allowing the supervisory lawyer to delegate less complex activities and concentrate on more complex issues.

### *3. Regulatory authority.*

Many administrative agencies already regulate non-lawyer representation.<sup>4</sup> However, if there is to be broader regulation, consideration should be given to

---

4 In the Federal tax area, for example, there is extensive regulation of non-lawyer services. The Internal Revenue Code requires that tax return preparers sign returns, and provides civil and criminal penalties for improper conduct. Representation before the Internal Revenue Service by other than lawyers and accountants requires qualification as an enrolled agent, including an examination process. Also, the Internal Revenue Service has issued extensive regulations governing tax practice. The Director of Practice monitors reports of incompetence or misconduct, and has substantial disciplinary authority over tax practitioners. The bar has an important role in consulting with the Service concerning its standards of tax practice and in reporting any serious incompetence or misconduct, but in this area of practice there may be little need to replace or significantly supplement the existing regulatory structure.

who would administer the regulatory scheme. Should it be the New York State Department of Education, which now administers most licenses, or should it be the courts? If the courts, should it be as comprehensive as lawyer regulation or something different? Should a private entity such as the bar association, NALA or NFPA be considered? This issue is sure to engender discussion and controversy. With ever increasing demands on the public fisc, it is unlikely that a state or court administered program would be funded with taxpayer dollars.

Some non-lawyers have expressed reservations about being regulated by lawyers rather than members of their own profession. Although in New York the integrity of the practice of law is entrusted to the courts and therein is the likely seat of regulation, the costs and other associated burdens may make some alternative more attractive, especially if a voluntary scheme is implemented.

*4. Qualifications.*

The issue of who qualifies for the “title” (“Registrant,” “Licensee,” “Certified”) will cause great study and debate. How much weight should be given to education? How much weight should be given to experience? Typically, lawyers have little or no experience when they are granted a license. Should different criteria apply to legal assistants?

Many proposals have been made in various states and provinces. None are identical. All require a combination of education and experience. Formal education in legal assistant programs is typically given greater weight than a bachelor’s degree in a social science. Sometimes ABA-approved legal assistant training programs are given greater weight than non-ABA-approved programs.

The issue of what qualifications are appropriate in New York will require careful consideration.

*5. Scope of activity.*

A critical issue that must be defined (and thereafter will require constant vigilance) is the nature and extent of services and activities that the regulated person will be authorized to perform. At the present time there are, apparently, differences among New York jurisdictions as to the latitude granted to non-lawyer practitioners. A formal definition of what is and what is not allowed will be required.

## **6. Supervision.**

The [Minnesota Supreme Court Study Committee] proposal would limit the registered lawyer to the supervision of two registered legal assistants. This is admittedly an arbitrary constraint and the Minnesota study committee considered it to be a “pilot project” until some practical experience was gained.

The issue of supervision is an important one. It is difficult not to acknowledge that some legal assistants know more about the nuts and bolts of some processes than their supervising attorneys. Real estate transactions may be a good example. The legal assistant is probably more familiar with the currently required affidavits and fees than the attorney. However, the attorney is better able to assess the essence of the transaction and the overall legal position of the client.

Although the NYSBA has promulgated Guidelines for the Utilization of Legal Assistants, a comprehensive review of these guidelines would be required as part of the imposition of a regulatory scheme.

## **7. Cost/benefit analysis.**

It is difficult to perform a cost/benefit analysis of a regulatory scheme in the abstract. However, some fundamental points may be recognized. The implementation of a regulatory scheme presumes that certain legal assistants will be allowed to perform legal services presently reserved only to attorneys. If it can also be assumed that these services will be performed at lower rates, then access to legal services will be opened to a larger segment of the public. That segment includes the lower to moderate income sector which frequently forgoes proper legal representation. Assuming further that attorney supervision is part of the scheme, proper legal representation may become available to more of the public, thereby greatly enhancing the goal of access to justice.

The cost of a regulatory scheme depends upon many factors. Private administration (such as the NALA-CLA Program) versus regulation by state agency must be considered. Expansion of the current OCA program must be considered. Clearly, fees will be required to offset the costs associated with administration. It must also be recognized that such fees will ultimately be borne by the client. Also, to the extent that fees do not adequately cover administrative expenses, the general public may be forced to fund some part of the regulatory scheme.

## **8. Conclusion.**

The Committee was impressed with the analytical framework utilized by the Minnesota Supreme Court Study Committee and believes it useful to reiterate several themes expressed by that committee. First, the Minnesota committee attempted to identify certain categories of legal services that could be provided by a legal assistant without supervision by an attorney. They concluded, however, that

the practice of law does not lend itself to the identification of discrete routine services. Few clients seek the services of an attorney to perform a clearly defined task. . . . Although a legal assistant may be competent to prepare a simple deed after it is determined that the client needs a deed, preparing the deed is a small part of the legal services rendered. **Determining that the deed is what the client needs is the more significant service provided by an attorney.** (Emphasis supplied)

The Minnesota committee also expressed concern that granting licenses to legal assistants to practice in a specialty area will not guarantee proper representation in that such a person might not recognize aspects of a case that involve areas of the law outside that specialty. Thus, the committee determined that it was not “feasible to specify certain legal procedures that a legal assistant would be allowed to provide without attorney supervision.”

Furthermore, the Minnesota committee expressed concern over the creation of another regulatory system similar to that for lawyers. In language which this Committee finds persuasive, they stated:

Although there is no inherent bar to the creation of a regulatory system for legal assistants, an elaborate system is already in place for lawyers. Creating a second system would be justified if it would result in significantly cheaper costs to the consumers of legal services without unacceptable risk, but it was not apparent to the committee how independent licensure would achieve these goals.

With so many unresolved problematic issues, the Committee cannot conclude the public interest would be served by any system of regulation, licensing or mandated certification at this time.

### **C. The Committee Recommends Active Enforcement of the U.P.L. 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.

The Committee feels that the NYSBA has a legitimate role to play in monitoring the unauthorized practice of law and assisting those charged by law with enforcing our unlawful practice statutes. However, this role must be viewed as only a part of a total effort and larger initiative to bring access to justice to the entire populace. We believe that implementation of alternative delivery systems (see D. next page) and enhanced utilization of traditional legal assistants should be significant aspects of such an initiative. We, therefore, recommend that the U.P.L. Committee be reconstituted to its former active role, including the issuance of advisory opinions. We understand there are certain safeguards, which have been recommended to our association, to ensure that the NYSBA does not encounter anti-trust objections to our activities. Those safeguards, such as appropriate disclaimers in written opinions, we find to be quite manageable.

The State Bar should encourage continued vigorous activity by the Attorney General and local District Attorneys in enjoining violations of the statutes prohibiting the practice of law without a license. Through the various outreach media available (e.g., the *State Bar Journal*, *State Bar News*, etc.), the NYSBA should educate its members as to the various Attorney General offices which handle unauthorized practice complaints. The Committee also recommends that the District Grievance Committees, which often receive complaints of unauthorized practice, sometimes by disbarred or suspended lawyers, be supplied with the same information and be encouraged to report instances of U.P.L. when detected.

#### **D. The Committee Recommends Consideration and Implementation of Alternative Delivery Systems for Lawyers' Services.**

The growing unmet legal needs of New Yorkers of modest and moderate means demand that legal services be provided effectively and be affordable. Sometimes this simply means making available attorneys accessible to clients. Other times this means that legal services must be provided in an affordable manner that is responsive to the needs of clients and attorneys. 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. Among these alternatives are prepaid legal services programs, assisted *pro se* litigation programs, modest means fee panels, and programs to match under-utilized attorneys with clients with unmet legal needs.

The Committee understands that Association President Witmer has now appointed a Commission on Legal Services for the Middle Income, to be chaired by Robert L. Geltzer of New York City. The Committee applauds this step which is designed to identify the major problems confronting middle-

income consumers of legal services and to devise workable solutions. In hopes that our work can provide useful suggestions to Mr. Geltzer's Commission, we offer the following recommendations.

*1. Matching under-utilized attorneys and clients with unmet legal needs.*

Although the Committee is unable to point to working models, the Committee is struck by the anomaly which exists in the marketplace for legal services. At the same time so many decry the unavailability of legal services at affordable rates, many of our members and many newly admitted lawyers are unable to find full-time employment or maintain economically viable practices. This suggests that experimentation is in order with programs which provide a matching mechanism for under-utilized attorneys and clients of modest means. Perhaps the organized bar can establish umbrella organizations, possibly modeled after the Legal Services Corporation, but privately funded and operating on a non-profit basis, which will actually employ attorneys, provide legal assistant and secretarial staffing, back office functions and equipment, eligibility screening and billing/collection services, all designed to provide legal representation at reduced rates; that is, non-profit legal clinics that provide employment to lawyers and legal services to those who otherwise cannot afford lawyers.

*2. Prepaid legal service plans present an effective vehicle for providing legal services from the perspective of both clients and attorneys.*

The client is relieved of anxiety over the amount and method of payment for legal services, and the attorney is guaranteed that he or she will be paid an agreed-upon fee for the services provided. The ABA<sup>5</sup> and NYSBA have encouraged the development of such panels. The ABA has urged Congress to permanently enact revisions to the Internal Revenue Code encouraging employer-funded prepaid plans. Both the ABA and NYSBA encourage attorney participation in prepaid panels. While concerns persist about profitability and quality control, these programs nonetheless provide a vehicle for increased access to attorneys for affordable legal services.

Credit card payment for legal services, whether as an adjunct to prepaid plans or otherwise, should be considered as a means of providing legal services to persons who cannot afford to pay fees out of current income.

---

5 See "Civil Justice: An Agenda for the 1990's, Report of the American Bar Association National Conference on Access to Justice in the 1990s," page 39 (1991).

### 3. *Modest means panels.*

While various programs exist designed to address the legal needs of the poor and near-poor (those with incomes no greater than 125% of the poverty level), there are few programs devoted to the great number of our citizens who fail to qualify for Legal Aid Society or Legal Services Corporation services, or are not eligible for *pro bono* services.

In response to this problem, many local bar associations have recently begun to implement and/or experiment with modest/moderate means panels. These panels consist of attorneys who are willing to provide legal services at reduced rates to screened clients who meet income qualifications for such services. The screening process is similar to that utilized by *pro bono* and legal services organizations.

These modest/moderate means panels are administered by local bar associations, usually in conjunction with the local lawyer referral service. That service matches clients of modest means with the empaneled attorneys.

### 4. *Pro Se assistance programs and clinics.*

Certain jurisdictions utilize *pro bono/pro se* assistance programs to assist unrepresented litigants. In some cases, a court-appointed attorney presents defenses which would probably not be raised in the absence of an attorney. In the event more extensive legal work is required, the case could be transferred to a local legal services corporation office, if the client meets financial eligibility guidelines.

*Pro se* clinics are also offered to *pro se* litigants by *pro bono* organizations in matters such as bankruptcy and divorce. Attorneys would meet the client outside of court. However, as with the in-court programs, persons of modest means usually do not qualify for the services of a *pro se* clinic.

A most innovative program is under way in Maricopa County, Arizona, where a kiosk is set up in the courthouse, using computer programming, to lead *pro se* litigants through the maze of forms and procedures involved in litigation matters. Although New York courts do not seem well disposed to the idea, in the view of the Committee, *pro se* clerks in various court settings can make a major contribution to improving the public's access to the legal system.

Unless the profession can find alternatives to traditionally delivered legal services to meet the challenges of the marketplace, we will be unable to effectively respond to calls for de-licensing of legal services or licensing of non-lawyer services. In our view, both the public and the bar will suffer as a result.

*Respectfully submitted,*

Joel K. Asarch

Joseph P. Dulin, Jr.

F. William Gray

Allen E. Kaye

Martin Minkowitz

Andrea Phoenix

Andrew M. Schnier

Robert J. Pearl, Chair

## **APPENDIX 2**

National Association of Legal Assistants (NALA)  
Code of Ethics and  
Professional Responsibility

National Federation of Paralegal Associations (NFPA)  
Model Code of Ethics and  
Professional Responsibility

## APPENDIX 2

### *Code of Ethics and Professional Responsibility of National Association of Legal Assistants, Inc.*

#### Preamble

A legal assistant must adhere strictly to the accepted standards of legal ethics and to the general principles of proper conduct. The performance of the duties of the legal assistant shall be governed by specific canons as defined herein so that justice will be served and goals of the profession attained. (See NALA Model Standards and Guidelines for Utilization of Legal Assistants, Section II.)

The Canons of ethics set forth hereafter are adopted by the National Association of Legal Assistants, Inc., as a general guide intended to aid legal assistants and attorneys. The enumeration of these rules does not mean there are not others of equal importance although not specifically mentioned. Court rules, agency rules and statutes must be taken into consideration when interpreting the canons.

#### Definition

Legal assistants, also known as paralegals, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.

**Canon 1** — A legal assistant must not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.

**Canon 2** — A legal assistant may perform any task which is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client, maintains a direct relationship with the client, and assumes professional responsibility for the work product. (See NALA Model Standards and Guidelines for Utilization of Legal Assistants, Sections IV and VII.)

**Canon 3** — A legal assistant must not (see NALA Model Standards and Guidelines for Utilization of Legal Assistants, Section VI):

- a. engage in, encourage, or contribute to any act which could constitute the unauthorized practice of law; and

- b. establish attorney-client relationships, set fees, give legal opinions or advice or represent a client before a court or agency unless so authorized by that court or agency; and
- c. engage in conduct or take any action which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.

**Canon 4** — A legal assistant must use discretion and professional judgment commensurate with knowledge and experience but must not render independent legal judgment in place of an attorney. The services of an attorney are essential in the public interest whenever such legal judgment is required. (See NALA Model Standards and Guidelines for Utilization of Legal Assistants, Section VII.)

**Canon 5** — A legal assistant must disclose his or her status as a legal assistant at the outset of any professional relationship with a client, attorney, a court or administrative agency or personnel thereof, or a member of the general public. A legal assistant must act prudently in determining the extent to which a client may be assisted without the presence of an attorney. (See NALA Model Standards and Guidelines for Utilization of Legal Assistants, Section V.)

**Canon 6** — A legal assistant must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal service.

**Canon 7** — A legal assistant must protect the confidences of a client and must not violate any rule or statute now in effect or hereafter enacted controlling the doctrine of privileged communications between a client and an attorney. (See NALA Model Standards and Guidelines for Utilization of Legal Assistants, Section V.)

**Canon 8** — A legal assistant must do all other things incidental, necessary, or expedient for the attainment of the ethics and responsibilities as defined by statute or rule of court.

**Canon 9** — A legal assistant's conduct is guided by bar associations' codes of professional responsibility and rules of professional conduct.

National Association of Legal Assistants  
156 S. Boston, Suite 200, Tulsa, OK 74119-4464  
(918) 587-6828 Fax (918) 582-6772

Adopted May 1975  
Revised November 1979; September 1988; August 1995

## **NFPA MODEL CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY**

The National Federation of Paralegal Associations, Inc. (“NFPA”) is a professional organization comprised of paralegal associations and individual paralegals throughout the United States. Members of NFPA have varying types of backgrounds, experience, education, and job responsibilities which reflect the diversity of the paralegal profession. NFPA promotes the growth, development and recognition of the paralegal profession as an integral partner in the delivery of legal services.

NFPA recognizes that the creation of guidelines and standards for professional conduct are important for the development and expansion of the paralegal profession. In May 1993, NFPA adopted this Model Code of Ethics and Professional Responsibility (“Model Code”) to delineate the principles for ethics and conduct to which every paralegal should aspire. The Model Code expresses NFPA’s commitment to increasing the quality and efficiency of legal services and recognizes the profession’s responsibilities to the public, the legal community, and colleagues.

Paralegals perform many different functions, and these functions differ greatly among practice areas. In addition, each jurisdiction has its own unique legal authority and practices governing ethical conduct and professional responsibilities.

It is essential that each paralegal strive for personal and professional excellence and encourage the professional development of other paralegals as well as those entering the profession. Participation in professional associations intended to advance the quality and standards of the legal profession is of particular importance. Paralegals should possess integrity, professional skill and dedication to the improvement of the legal system and should strive to expand the paralegal role in the delivery of legal services.

**CANON 1**

*A paralegal<sup>1</sup> shall achieve and maintain a high level of competence.*

EC-1.1 A paralegal shall achieve competency through education, training and work experience.

EC-1.2 A paralegal shall participate in continuing education to keep informed of current legal, technical and general developments.

EC-1.3 A paralegal shall perform all assignments promptly and efficiently.

**CANON 2**

*A paralegal shall maintain a high level of personal and professional integrity.*

EC-2.1 A paralegal shall not engage in any ex parte<sup>2</sup> communications involving the courts or any other adjudicatory body in an attempt to exert undue influence or to obtain advantage for the benefit of only one party.

EC-2.2 A paralegal shall not communicate, or cause another to communicate with a party the paralegal knows to be represented by a lawyer in a pending matter without the prior consent of the lawyer representing such other party.

EC-2.3 A paralegal shall ensure that all timekeeping and billing records prepared by the paralegal are thorough, accurate, and honest.

EC-2.4 A paralegal shall be scrupulous, thorough and honest in the identification and maintenance of all funds, securities, and other assets of a client and shall provide accurate accountings as appropriate.

EC-2.5 A paralegal shall advise the proper authority of any dishonest or fraudulent acts by any person pertaining to the handling of the funds, securities or other assets of a client.

---

1 “Paralegal” is synonymous with “Legal Assistant” and is defined as a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work.

2 “Ex Parte” denotes actions or communications conducted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

**CANON 3**

*A paralegal shall maintain a high standard of professional conduct.*

EC-3.1 A paralegal shall refrain from engaging in any conduct that offends the dignity and decorum of proceedings before a court or other adjudicatory body and shall be respectful of all rules and procedures.

EC-3.2 A paralegal shall advise the proper authority of any action of another legal professional which clearly demonstrates fraud, deceit, dishonesty, or misrepresentation.

EC-3.3 A paralegal shall avoid impropriety and the appearance of impropriety.

**CANON 4**

*A paralegal shall serve the public interest by contributing to the delivery of quality legal services and the improvement of the legal system.*

EC-4.1 A paralegal shall be sensitive to the legal needs of the public and shall promote the development and implementation of programs that address those needs.

EC-4.2 A paralegal shall support bona fide efforts to meet the need for legal services by those unable to pay reasonable or customary fees; for example, participation in pro bono projects and volunteer work.

EC-4.3 A paralegal shall support efforts to improve the legal system and shall assist in making changes.

**CANON 5**

*A paralegal shall preserve all confidential information<sup>3</sup> provided by the client or acquired from other sources before, during, and after the course of the professional relationship.*

EC-5.1 A paralegal shall be aware of and abide by all legal authority governing confidential information.

---

3 “Confidential Information” denotes information relating to a client, whatever its source, which is not public knowledge nor available to the public. (“Non-Confidential Information” would generally include the name of the client and the identity of the matter for which the paralegal provided services.)

EC-5.2 A paralegal shall not use confidential information to the disadvantage of the client.

EC-5.3 A paralegal shall not use confidential information to the advantage of the paralegal or of a third person.

EC-5.4 A paralegal may reveal confidential information only after full disclosure and with the client's written consent; or, when required by law or court order; or, when necessary to prevent the client from committing an act which could result in death or serious bodily harm.

EC-5.5 A paralegal shall keep those individuals responsible for the legal representation of a client fully informed of any confidential information the paralegal may have pertaining to that client.

EC-5.6 A paralegal shall not engage in any indiscreet communications concerning clients.

**CANON 6**

*A paralegal's title shall be fully disclosed.<sup>4</sup>*

EC-6.1 A paralegal's title shall clearly indicate the individual's status and shall be disclosed in all business and professional communications to avoid misunderstandings and misconceptions about the paralegal's role and responsibilities.

EC-6.2 A paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures, directories, and advertisements.

**CANON 7**

*A paralegal shall not engage in the unauthorized practice of law.*

EC-7.1 A paralegal shall comply with the applicable legal authority governing the unauthorized practice of law.

---

4 "Disclose" denotes communication of information reasonably sufficient to permit identification of the significance of the matter in question.

## **CANON 8**

*A paralegal shall avoid conflicts of interest and shall disclose any possible conflict to the employer or client, as well as to the prospective employers or clients.*

EC-8.1 A paralegal shall act within the bounds of the law, solely for the benefit of the client, and shall be free of compromising influences and loyalties. Neither the paralegal's personal or business interest, nor those of other clients or third persons, should compromise the paralegal's professional judgment and loyalty to the client.

EC-8.2 A paralegal shall avoid conflicts of interest which may arise from previous assignments, whether for a present or past employer or client.

EC-8.3 A paralegal shall avoid conflicts of interest which may arise from family relationships and from personal and business interests.

EC-8.4 A paralegal shall create and maintain an effective recordkeeping system that identifies clients, matters, and parties with which the paralegal has worked, to be able to determine whether an actual or potential conflict of interest exists.

EC-8.5 A paralegal shall reveal sufficient non-confidential information about a client or former client to reasonably ascertain if an actual or potential conflict of interest exists.

EC-8.6 A paralegal shall not participate in or conduct work on any matter where a conflict of interest has been identified.

EC-8.7 In matters where a conflict of interest has been identified and the client consents to continued representation, a paralegal shall comply fully with the implementation and maintenance of an Ethical Wall.<sup>5</sup>

National Federation of Paralegal Associations, Inc.  
P.O. Box 33108, Kansas City, MO 641140108  
(816) 941-4000 Fax (816) 941-2725

---

5 "Ethical Wall" refers to the screening method implemented in order to protect a client from a conflict of interest. An Ethical Wall generally includes, but is not limited to, the following elements: (1) prohibit the paralegal from having any connection with the matter; (2) ban discussions with or the transfer of documents to or from the paralegal; (3) restrict access to files; and (4) educate all members of the firm, corporation or entity as to the separation of the paralegal (both organizationally and physically) from the pending matter. For more information regarding the Ethical Wall, see the NFPA publication entitled "The Ethical Wall– Its Application to Paralegals."

### **APPENDIX 3**

#### *Judiciary Law of the State of New York*

##### Section 478:

Practicing or appearing as attorney-at-law  
without being admitted and registered.

##### Section 484:

None but attorneys to practice in state.

## APPENDIX 3

### *N.Y. JUDICIARY LAW 478*

#### *Practicing or appearing as attorney-at-law without being admitted and registered*

It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath. Provided, however, that nothing in this section shall be held to apply (1) to officers of societies for the prevention of cruelty to animals, duly appointed, when exercising the special powers conferred upon such corporations under section fourteen hundred three of the not-for-profit corporation law; or (2) to law students who have completed at least two semesters of law school or persons who have graduated from a law school, who have taken the examination for admittance to practice law in the courts of record in the state immediately available after graduation from law school, or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, acting under the supervision of a legal aid organization when such students and persons are acting under a program approved by the appellate division of the supreme court of the department in which the principal office of such organization is located and specifying the extent to which such students and persons may engage in activities otherwise prohibited by this statute; or (3) to law students who have completed at least two semesters of law school, or to persons who have graduated from a law school approved pursuant to the rules of the court of appeals for the admission of attorneys and counselors-at-law and who have taken the examination for admission to practice as an attorney and counselor-at-law immediately available after graduation from law school or the examination immediately available after being notified by the board of

law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, when such students or persons are acting under the supervision of the state or a subdivision thereof or of any officer or agency of the state or a subdivision thereof, pursuant to a program approved by the appellate division of the supreme court of the department within which such activities are taking place and specifying the extent to which they may engage in activities otherwise prohibited by this statute and those powers of the supervising governmental entity or officer in connection with which they may engage in such activities.

(As amended L. 1986, c. 122, § 1; L. 1986, c. 225, § 1; L. 1988, c. 124 § 1; L. 1993, c. 201, § 1).

***N.Y. JUDICIARY LAW 484***  
***None but attorneys to practice in the state***

No natural person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court or before any magistrate, or for preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate, wills, codicils, or any other instrument affecting the disposition of property after death, or decedents' estates, or pleadings of any kind in any action brought before any court of record in this state, or make it a business to practice for another as an attorney in any court or before any magistrate unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record in the state; but nothing in this section shall apply (1) to officers of societies for the prevention of cruelty to animals, duly appointed, when exercising the special powers conferred upon such corporations under section fourteen hundred three of the not-for-profit corporation law; or (2) to law students who have completed at least two semesters of law school or persons who have graduated from a law school, who have taken the examination for admittance to practice law in the courts of record in the state immediately available after graduation from law school, or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, acting under the supervision of a legal aid organization, when such students and persons are acting under a program approved by the appellate division of the supreme court of the department in which the principal office of such organization is located and specifying the extent to which such students and persons may

engage in activities prohibited by this statute; or (3) to persons who have graduated from a law school approved pursuant to the rules of the court of appeals for the admission of attorneys and counselors-at-law and who have taken the examination for admission to practice as an attorney and counselor-at-law immediately available after graduation from law school or the examination immediately available after being notified by the board of law examiners that they failed to pass said exam, and who have not been notified by the board of law examiners that they have failed to pass two such examinations, when such persons are acting under the supervision of the state or a subdivision thereof or of any officer or agency of the state or a subdivision thereof, pursuant to a program approved by the appellate division of the supreme court of the department within which such activities are taking place and specifying the extent to which they may engage in activities otherwise prohibited by this statute and those powers of the supervising governmental entity or officer in connection with which they may engage in such activities.

(As amended L. 1986, c. 225, § 2; L. 1993, c. 201, § 2.)

## **APPENDIX 4**

Federal Administrative Agencies  
Before Which Non-Lawyers May Appear  
and the Applicable Regulations.

*(Compiled from Results of the 1984 Survey  
of Non-Lawyer Practice  
Before Federal Administrative Agencies.)*

## APPENDIX 4

### **FEDERAL ADMINISTRATIVE AGENCIES BEFORE WHICH NON-LAWYERS MAY APPEAR AND THE APPLICABLE REGULATIONS**

The U.S. Supreme Court held in *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963) that no state may prohibit, through its U.P.L. provisions, a non-lawyer from practice before a federal administrative agency if the agency itself and federal statute authorizes such practice.

*Examples of such agencies and regulations include:*

#### **Bureau of Indian Affairs**

(Financial Assistance Services Program) [25 CFR § 20]

**Civil Aeronautics Board** [14 CFR §§ 300.1-6, 302.11]

**Comptroller of the Currency** [12 CFR § 19.3]

**Consumer Product Safety Commission** [16 CFR § 1025.61]

#### **Department of Agriculture:**

Food Stamps [7 CFR § 273]

Marketing Service [7 CFR § 50.27]

#### **Department of Commerce:**

Patent & Trademark Office [35 U.S.C. §§ 31-33]

#### **Department of Health and Human Services:**

Public Health (Medicare, Part B) [42 CFR § 405]

Food and Drug Administration [21 CFR §§ 12.40, 12.45]

Welfare

(Medicare, Aid to Families w/Dependent Children) [45 CFR § 205]

#### **Department of Justice:**

Drug Enforcement Administration [21 CFR § 1316.50]

**Department of Labor:**

Benefits Review Board [20 CFR §§ 802.201(b), 802.202]  
Employees Compensation Appeals Board [20 CFR § 501.11]  
National Railroad Adjustment Board [45 U.S.C. § 3135]  
Wage & Appeals Board [20 CFR §§ 725.362(a), 725.365, 725.366(b)]

**Department of Transportation:**

Maritime Administration [46 CFR § 201.21]

**Department of Veterans Affairs:**

Veterans Administration [38 CFR § 14]

**Federal Deposit Insurance Corporation** [12 CFR § 308.04]

**Federal Energy Regulatory Commission** [18 CFR § 385.2101]

**Federal Maritime Administration** [46 CFR § 502.30]

**Federal Mine Safety & Health Review Commission** [29 CFR § 2700.3(b)]

**General Accounting Office** [31 U.S.C. §§ 731-732; 4 CFR §§ 11, 28]

**Immigration and Naturalization Service** [8 CFR § 292.1-3]

**Internal Revenue Service** [13 CFR Part 10; 31 U.S.C. § 330]

**Interstate Commerce Commission** [49 CFR § 1103]

**National Credit Union Administration** [12 CFR § 747]

**National Labor Relations Board**

**National Mediation Board** [Agency governed by 29 CFR § 1200]

**National Transportation Safety Board** [49 CFR §§ 821, 831, 845]

**Occupational Safety and Health Review Commission** [29 CFR § 2200.22]

**Small Business Administration** [13 CFR §§ 121.11, 134.16]

**Social Security Administration:** [42 U.S.C § 406(a); 29 CFR]

Supplemental Security Income for the  
Aged, Blind and Disabled (551) [20 CFR § 416, Subpart O]

**U.S. Customs Service**

**U.S. Environmental Protection Agency** [40 CFR §§ 124, 164.30, 22.10]

Compiled from “Results of the 1984 Survey of Non-Lawyer Practice before Federal Administrative Agencies,” ABA Standing Committee on Lawyers’ Responsibility for Client Protection and the ABA Center for Professional Responsibility, February 1985, © 1985 American Bar Association. Reprinted with permission.

## **APPENDIX 5**

New York County Lawyers' Association  
Committee on Legal Assistance,  
Survey of NYC and NYS Agencies, 1993

## APPENDIX 5

### **NEW YORK COUNTY LAWYERS' ASSOCIATION Committee on Legal Assistance Summary Results**

#### SURVEY OF NYC AND NYS AGENCIES<sup>7</sup>

	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	NOT APPLICABLE
New York City <sup>8</sup>	12	7	8
New York State <sup>9</sup>	14	6	4

Excluding Agencies that responded that the question of non-lawyer advocacy was not applicable to their mission (because no proceedings were held, or no determinations made, or for some other reason), the survey found the majority of NYC and NYS Agencies to permit non-lawyer advocacy for at least some purposes and in at least some form:

NYC Agencies: 63%

NYS Agencies: 70%

---

7 This survey was conducted by Cornelia Dude, Associate Counsel, Metropolitan Life Insurance Company, Member of the Committee on Legal Assistance. The data was compiled through December 1992.

8 Of 33 NYC Agencies surveyed, 27 responded.

9 Of 27 NYS Agencies surveyed, 24 responded.

## TABLE OF CONTENTS

New York City Agencies .....43

New York State Agencies .....47

### NEW YORK CITY AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Administrative Trials & Hearings NYC Office of	X		48 RCNY § 1-09 <sup>1</sup>
Consumer Affairs, NYC Department of	X		Unpublished regulations; available from Department
Buildings NYC Department of		X	
Education, NYC Board of	X <sup>2</sup>		20 USC § 1415(d)(1); Cmsr's Reg. 200.5(c)(5)
Elections, NYC Board of	X		Unpublished regulations; available from Board
Employment, NYC Department of			Not applicable

1 Civil Service Law §§ 71, 72 & 75 do not prohibit such representation and C.S.L. § 75(2) permits representation by a union representative.

2 Only for student suspensions and impartial hearings.

NEW YORK CITY AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Environmental Protection, NYC Department of	X		Title 15 RCNY, Chapters 31 & 32
Finance, NYC Department of	X <sup>3</sup>		Title 19 RCNY § 27-01(f)
General Services, NYC Department of			Not applicable
Housing Authority NYC	X <sup>4</sup>		Unpublished procedures; available from Housing Authority
Investigation, NYC Department of		X	
Juvenile Justice, NYC Department of			Not applicable

3 Representation by independent non-lawyer representatives at the Bureau of Hearings is limited to certified public accountants duly qualified to practice in New York State; or public accountants enrolled with the New York State Education Department under Article 149 of the Education Law; or accountants duly authorized to practice in any other state, who prepared the taxpayer's return for the year to which the petition relates or the taxpayer's claim for refund of tax paid for such year; or persons admitted to practice before the Internal Revenue Service or before the Tax Court of the United States provided that the person described above has filed a power of attorney with the Department of Finance. Special permission of the Commissioner of Finance or her designee is required to have a person other than those described in 19 RCNY § 27-01(f) represent a taxpayer at a proceeding before the Commissioner of Finance.

4 Non-lawyer representation is permitted in two areas: tenancy litigation (termination of tenancy, tenant grievances, leased housing program) and civil service employee disciplinary proceedings.

## NEW YORK CITY AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Mental Health, Mental Retardation, & Alcoholism NYC Department of	X		Not applicable
Police, NYC Department of		X <sup>5</sup>	Title 38 RCNY
Parking Violations Bureau, NYC	X <sup>6</sup>		Title 34 RCNY
Parks & Recreation, NYC Department of		X	Unpublished procedures; available from Housing Authority
Probation, NYC Department of		X	
Records & Information Services, NYC Department of			
Rent Guidelines, NYC Board of			Not applicable

- 5 The Police Department conducts two types of administrative hearings: firearms license suspension cases and disciplinary cases against members of the Department. Only licensed attorneys are authorized to represent litigants at these hearings.
- 6 A non-lawyer may appear on behalf of another as an “unpaid representative.” See 34 RCNY § 3-09(c).

NEW YORK CITY AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Sanitation, NYC Department of		X	Not applicable
Standards & Appeals, NYC Board of			Not applicable
Tax Commission, NYC	X		Title 21 RCNY, Chapter 1
Taxi & Limousine Commission, NYC	X		Title 35 RCNY, Chapter 7
Telecommunica- tions, NYC Department of			Not applicable
Transit Adjudication Bureau, NYC	X		
Transit Authority, NYC		X	
Transportation, NYC Department of	X <sup>7</sup>		Vehicle & Traffic Law § 237(3); 34 RCNY § 3-09

7 Applies to Parking Violations Bureau only.

## NEW YORK STATE AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Agriculture and Markets, NYS Department of	X		
Banking, NYS Department of			Not applicable
Civil Service, NYS Department of	X <sup>8</sup>		Civil Service Law §§ 72, 75
Court Administration, NYS Office of			Not applicable
Economic Development, NYS Department of	X <sup>9</sup>		General Municipal Law, Art. 18-B, §§ 959- 969; State Administrative Act, Arts. 2 and 3

- 8 Representation (in the sense of a representative who has the power to bind the individual by signature on documents or statements on the record) is limited only to those legally empowered to so undertake (a retained attorney; a union representative in proceedings under Civil Service Law §§ 71, 72, 75, and 76; or a lawful personal representative by power of attorney, order of guardianship, letters testamentary, or otherwise). Only “assistance” by independent non-lawyers is permitted; the unauthorized practice of law, or the charge of any fee for such assistance, is not condoned.
- 9 The NYS Department of Economic Development holds adjudicatory hearings solely with respect to:
- (1) NYS Economic Development Zones Program (Gen. Mun. Law, Art. 18-B). Article 18-B does not address the issue of representation by independent non-lawyer representatives. To the extent applicable, 5 NYCRR § 12.12(1) provides, in pertinent part, that “[a] party may appear in person or by an attorney.”
  - (2) NYS Minority and Women-Owned Business Statewide Certification Program (Exec. Law § 314 and Eco. Dev. Law § 116). Article 15-B of the Executive Law does not address the issue of representation by independent non-lawyer representatives. To the extent applicable, 9 NYCRR § 544.7(n) provides, in pertinent part, that “[a] party may appear in person or be represented by another person.”

## NEW YORK STATE AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Education, NYS Department of		X	
Employment, NYS Department of	X		
Environmental Conservation, NYS Department of		X	
Health, NYS Department of		X <sup>10</sup>	10 NYCRR § 51.11(a)(1)(2); Public Health Law §§ 230(7) and (10)(c)(3)
Industrial Board of Appeals, NYS	X <sup>11</sup>		12 NYCRR § 65.8
Insurance, NYS Department of	X <sup>12</sup>		

10 Hearings and non-hearing work are conducted concerning a variety of subjects. Generally, non-lawyers are not permitted to represent parties during administrative hearings. Attorneys must be admitted to the Bar of the State of New York. Non-hearing processes may rely on documents certified by owners of health care facilities or other entities regulated by the Department, and/or certified public accountants.

11 Representation limited to licensed accountants, engineers and architects in certain cases.

12 Parties to administrative proceedings are permitted to appear *pro se*. Parties desiring representation by non-lawyers may be permitted such representation but all such requests are considered *ad hoc*, with consideration of whether such representation would violate the Judiciary Law or other applicable authority.

## NEW YORK STATE AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Labor, NYS Department of	X <sup>13</sup>		Labor Law § 101; 12 NYCRR §§ 65.8, 60.5, 461.4, 463.3
MentallyDisabled, NYS Commission on Quality of Care for the			Not applicable
Mental Health, NYS Office of		X	14 NYCRR § 503.4(h)(l)(i)
Motor Vehicles, NYS Department of (Traffic Violations Divisions)	X <sup>14</sup>		Vehicle & Traffic Law, Art. 2-A, § 121, <i>et seq.</i>
Parole, NYS Division of		X	
Port Authority of New York and New Jersey			Not applicable

13 Authority for non-lawyer representation exists with regard to the representation of parties in hearings before the Industrial Board of Appeals to review the validity and reasonableness of a rule, regulation or order of the Commissioner and before an administrative law judge or the Unemployment Insurance Appeal Board on matters related to unemployment insurance benefits. Similar authority is not provided under the Administrative Adjudication Plan, which governs all other hearings held in furtherance of the Department's mandated responsibilities.

14 Non-lawyer representation permitted only on a limited basis. Section 124.2 provides, in relevant part, that a motorist "may be represented by an attorney or, in the referee's discretion, by any other person the motorist chooses."

NEW YORK STATE AGENCIES

AGENCY	PERMITS NON-LAWYER ADVOCACY	DOES NOT PERMIT NON-LAWYER ADVOCACY	PUBLISHED AUTHORITY / COMMENT
Public Service Commission / Public Service, NYS Department of	X		16 NYCRR § 2.2
Racing & Wagering, NYS Board of		X	
Social Services, NYS Department of	X		18 NYCRR § 358-3.9
Taxation and Finance, NYS Department of	X		Tax Law §§ 170.3-a(d), 2014; 20 NYCRR §§ 3000.2, 4000.2
Transportation, NYS Department of	X		17 NYCRR Part 501
Unemployment Insurance Appeal, NYS Board of	X		Labor Law §§ 460.5, 460.6
Workers' Compensation Board, NYS	X		Workers' Comp. Law § 24-a; Workers' Comp. Law Rules & Regs., §§ 302-1.1 to 302-1.11

Reprinted with Permission of the New York County Lawyers' Association

## **APPENDIX 6**

### **References to Ethics Opinions Relating to Utilization of Legal Assistants**

## APPENDIX 6

*This appendix reflects Ethics Opinions, Advisory Opinions and statutes through 1996. It does not purport to be exhaustive.*

ADMINISTRATIVE AGENCIES See Court Rules and Appendix 4.

ADVICE TO CLIENTS A legal assistant should not independently advise a client concerning his or her legal rights or duties. N.Y. State 44 (1967); N.Y. City 78 (1927-28), 884 (1974); ABA 316 (1967).

AFFIDAVITS See Litigation

ANNOUNCEMENTS It is improper for a law firm to send an announcement listing a legal assistant as associated with the firm (emphasis added), N.Y. City 454 (1938); N.Y. County 641(1974).

BRIEFS See Court Rules, Litigation. It is permissible to give a legal assistant credit for work performed on a brief. N.Y. State 299 (1973); N.Y. City 884 (1974).

BUSINESS CARDS A legal assistant's business card may refer to the name, address and telephone number of the lawyer-employer, provided his or her status is clearly revealed on the card. N.Y. State 261(1972); N.Y. County 673 (1989); 641(1974); N.Y. City 884 (1974); ABA Inf. 1185(1971); 1000(1967); 909(1966);

CALENDAR CALLS See Litigation. The legal assistant may deal directly with and appear before courts and other tribunals on routine

matters, such as responding to calendar calls, provided no oral argument or exercise of judgment of any kind is required (N.Y. City 884; N.Y. State 44) and, of course, provided that such appearance would not contravene a standing rule of the court or tribunal. N.Y. County 666 (1985).

COLLECTION OF OVERDUE  
ACCOUNTS

A law school graduate, not admitted to the bar, cannot undertake to collect overdue accounts on behalf of prospective clients. Nassau County 3 (1980).

CONFIDENCES

A legal assistant is under a duty to preserve a client's confidences and secrets. A lawyer-employer is under an obligation to exercise care in selecting and training his or her legal assistant to prevent improper disclosure thereof. DR 4-101(D); EC 4-2; see CPLR 4503; N.Y. County 641 (1974); N.Y. City 884 (1974).

COURT APPEARANCES

See Court Rules, Litigation and Appendix 4.

COURT RULES

See Briefs, Law Students, Litigation. Eligible law students and others may appear in certain courts subject to court approval, general supervision by attorney, and consent of client. For example, see General Rules of U.S. District Courts, Southern and Eastern Districts of N.Y., Rule 4.1 for Eastern District of N.Y.; Rules Supplementing Federal Rules of Appellate Procedure, U.S. Court of Appeals, Second Circuit, Part II, 46(e); Rules of Practice before the Tax Court of the U.S., Rule 2.

DEEDS	A legal assistant may prepare a deed, provided the lawyer-employer assumes responsibility for it. <i>Cf.</i> ABA 316 (1967).
DEPOSITIONS	<i>See</i> Litigation. The conduct of depositions by a law student or law school graduate not yet admitted to the bar is a proscribed activity under the Code. Nassau County 53 (1988).
DISBARRED ATTORNEY	It would be ethically improper for a lawyer to employ, in any capacity related to the practice of law, an individual who has been disbarred, or who is suspended from the practice of law, or who has resigned from the bar in the face of pending cases. N.Y. County 666 (1985).
DISCLOSURE OF STATUS	A legal assistant's status should be disclosed at the outset of contact with the employer's client, any attorney or member of the public. N.Y. City 884 (1974).
INTERVIEWING WITNESSES	<i>See</i> Litigation.
LAW STUDENTS	<i>See</i> Court Rules and Appendix 3. Certain law students and law school graduates may, under supervision, engage in law-related activities in the work of a legal aid organization, in certain Family Court proceedings, and in assisting District Attorneys.
LEGAL FEES	<i>See</i> Retirement and Pension Plans. A lawyer or law firm may not share legal fees with a non-lawyer, subject to certain exceptions. DR 3-102(A).

## LETTERHEAD

The law firm or law department's letterhead may list paralegals provided that there is an appropriate designation showing they are not lawyers. N.Y. State 500 (1978), *overturning* 261 (1972); N.Y. County 673 (1989); 641 (1972); N.Y. City 884 (1974); Nassau County 14 (1987); ABA Inf. 845 (1965); DR 2-102(A)(4).

## LETTERS

A legal assistant may sign letters on the lawyer's letterhead, when status of the legal assistant as a non-lawyer is clearly designated. N.Y. State 255 (1972); N.Y. City 884 (1974). See N.Y. City 837 (1958); and N.Y. County 420 (1953).

## LITIGATION

See Briefs, Court Rules and Appendix 4. A legal assistant may answer calendar calls where no argument is necessary; investigate questions of law; assist in the preparation of briefs, affidavits, subpoenas, pleadings; interview prospective witnesses; assist in preparation for trial; serve and file notes of issue, notices of trial. N.Y. State 44 (1967), 299 (1973); N.Y. City 78 (1927-28), 884 (1974); N.Y. County 641 (1974); ABA 316 1967).

In connection with court proceedings, a legal assistant may not argue motions, conduct depositions of a witness, conduct examinations before trial or examinations in supplementary proceedings, unless permitted to do so by statute or rule of court. N.Y. State 44 (1967), 304 (1973); N.Y. City 884 (1974); N.Y. County 666 (1985), 641 (1972); ABA 316 (1967).

MOTIONS	See Litigation.
NOTICES ON TRIAL	See Litigation
PARTNERSHIP	A lawyer may not form a partnership with a legal assistant if any of the activities of the partnership consist of the practice of law. DR 3-103, EC 3-3.
PLEADINGS	See Litigation.
PREPARATION FOR TRIAL	See Litigation.
REAL ESTATE CLOSINGS	<p>A lawyer may delegate attendance at a real estate closing to a paralegal, depending upon the facts of the case. The delegated duties must be ministerial, and the lawyer must retain full responsibility for the transaction, maintain a direct relationship with the client, and supervise the delegated work. Supervision requires assurance of substantive and ethical sufficiency of the delegated work. The lawyer must consider in advance what will take place, review what in fact occurred and have a plan in place that prevents the unauthorized practice of law by the paralegal. N.Y. State 677 (1995).</p> <p>An attorney may assign a legal assistant to attend a closing of title in a real estate transaction, but only if the attorney personally supervises the delegated work, prevents the legal assistant from giving legal advice or judgement on legal issues and maintains a direct relationship with the client. . . . Phone supervision is not sufficient <i>per se</i>, but may be either sufficient or</p>

insufficient, depending on the activities engaged in by the non-lawyer attendant to whom the title closing chore was assigned. Nassau County 90-13 (1990), which reaffirmed 86-43 (1986).

## RETIREMENT & PENSION PLANS

A legal assistant may be included in the retirement plan of a lawyer or law firm, even though the plan is based in whole or in part on a profit-sharing arrangement. DR 3-102(A)(3); EC 3-8; N.Y. State 282 (1973); N.Y. County 884 (1974); ABA 325 (1970).

## STATUTES

See Court Rules and Appendixes 3 and 4.

## SUPERVISION

A lawyer may delegate attendance at a real estate closing to a paralegal, depending upon the facts of the case. The delegated duties must be ministerial and the lawyer must retain full responsibility for the transaction, maintain a direct relationship with the client, and supervise the delegated work. Supervision requires assurance of substantive and ethical sufficiency of the delegated work. The lawyer must consider in advance what will take place, review what in fact occurred and have a plan in place that prevents the unauthorized practice of law by the paralegal. N.Y. State 677 (1995).

A legal assistant's work must be under the supervision of a lawyer. N.Y. County 641 (1975), 420 (1953); N.Y. City 11 (1995).

## SUPPLEMENTARY PROCEEDINGS

See Litigation.

TITLE

There is no particular approved or official title for a lawyer’s employee who performs so called paralegal services. “Legal assistant,” “paralegal,” “paraprofessional,” “legal clerk,” “law clerk,” and “legal secretary” are among the terms commonly used to describe such employees, depending upon the particular work they perform. (Emphasis added) N.Y. City 7 (1983).

Titles of paralegals employed by lawyers may not be false or misleading. (“Senior Paralegal” is acceptable). N.Y. State 640 (1992)

WILLS

A legal assistant may not supervise the execution of a will. N.Y. State 343 (1974).

WORKERS’  
COMPENSATION

See Appendix 4. Not improper for a lawyer to employ a licensed representative to appear before the Workers’ Compensation Board. N.Y. State 446 (1976).