

## INTRODUCTION

In August 1995, the American Bar Association's Commission on Nonlawyer Practice issued its report, *Nonlawyer Activity in Law-Related Situations*. This report followed hearings held in 1992, 1993 and 1994 at which nearly 400 persons offered testimony and over 2,000 documents were reviewed. The report amply demonstrated that nonlawyers provide services which in many instances are related to the practice of law. Furthermore, the factual findings demonstrated that nonlawyers, both as paralegals who are accountable to lawyers and in other roles, have become an important part of the delivery of legal services. Six recommendations were formulated as a result of the Commission's work. One of the recommendations urged expansion of the range of activities of traditional paralegals, with lawyers remaining accountable for the paralegal activities (Recommendation 2).

Concurrently, the National Federation of Paralegal Associations (NFPA), the National Association of Legal Assistants (NALA) and the American Association for Paralegal Education (AAfPE) also addressed concerns relating to the definition of the terms “paralegal” and “legal assistant”. These organizations also addressed themselves to the establishment of standards for education, ethics, professionalism, and to the expanded role of skilled paralegals in the delivery of legal services.

In May 1996, the State Bar of Wisconsin's Commission on the Delivery of Legal Services, which was commissioned in September 1994, issued its report and findings, following hearings held around the State of Wisconsin in August 1995. The mission of this commission was to explore and make recommendations to increase the availability of legal services to low and moderate-income persons in Wisconsin, specifically those who did not qualify for publicly financed legal services. One of the 14 recommendations of the Commission (Recommendation 7) was for the State Bar to develop guidelines for expanding the range of activities traditionally performed by paralegals, with lawyers remaining accountable for the paralegal's activities.

The State Bar of Wisconsin Paralegal Practice Task Force (Task Force) was created both to address concerns expressed over unmet legal needs, and to pursue the Commission's recommendations that better utilization of paralegals will help meet some of the legal needs that presently go unserved.

The Task Force also gave consideration to the concerns of state and national paralegal groups over the professionalism of a paralegal career, given the fact that there are no current standards or requirements for those who choose to call themselves paralegals. The Paralegal Association of Wisconsin began addressing these issues in 1995, when steps were taken to develop legislation that would require paralegal licensure through the Wisconsin Department of Regulation and Licensing. Further discussions with members of the State Bar of Wisconsin, the Board of Attorneys of Professional Responsibility and the Board of Bar Examiners indicated a need to approach regulation which would be overseen by the Supreme Court of Wisconsin, while at the same time allowing for cooperative input from paralegals regarding any form of licensing or regulation. The Task Force then drew together the talents and resources of attorneys, paralegals associated with the Paralegal Association of Wisconsin, the Madison Area Paralegal Association, and paralegal educators. Additionally, there are adjunct members who brought to the Task Force their expertise in their particular areas, such as the Board of Bar Examiners, the Board of Attorneys of Professional Responsibility and the State Bar Board of Governors.

In July 1996 the Task Force met to begin the process of determining the issues surrounding paralegal practice. The Task Force identified several topics for discussion, which included attorney accountability vs. direct supervision, duties of legal secretaries vs. paralegals, interest in licensure and testing, threat to the practice of law, pro bono activities of paralegals, retroactive and/or grandfathering of practicing paralegals, educational criteria and requirements for continuing legal education and legal ethics. Additionally, the Task Force has addressed the issues of paralegal accountability for legal malpractice and professional responsibility.

Over the course of the last 3 years the Task Force has committed itself to addressing the issues and concerns of paralegal licensure and increased utilization of paralegals in the delivery of legal services. The Task Force now has accomplished the following: (1) created a definition of paralegal; (2) adapted provisions of SCR 20 to apply to paralegals; (3) created a grandfathering provision for practicing paralegals; (4) created guidelines for educational requirements of future paralegals; (4) drafted a Code of Ethics for paralegals; (5) drafted a Paralegal Oath.

The intent of the Task Force is to establish criteria for the licensure of paralegals in Wisconsin so as to establish recognized standards of training, education and qualifications that will assure attorneys, consumers and the courts that the persons providing paralegal services in the State of Wisconsin have achieved a level of ability that can be measured and recognized.

## **SCR \_\_.01 Paralegal: Definition and Regulation**

(1) "Paralegal" means an individual qualified through education and training, employed or retained to perform substantive legal work and supervised by an attorney licensed to practice law in this state, requiring a sufficient knowledge of legal concepts that, absent the paralegal, the attorney would perform the work.

(2) No individual shall utilize the title "paralegal" in this state unless that individual is licensed under this chapter.

## DEFINITION

A "Paralegal" is an individual qualified through education and training, employed or retained to perform substantive legal work and supervised by a lawyer licensed to practice law in this state requiring a sufficient knowledge of legal concepts that, absent the Paralegal, the attorney would perform the work.(1)

The Task Force also adopted the following footnote regarding "grandfathering" Paralegals with work experience as part of the definition:

- (1) We presume a "grandfather clause" for qualification by work experience. All the members of the Task Force agreed that work experience could be deleted from the list of qualifications so long as any ultimate program implemented as the result of the work of this Task Force would provide a "grandfather clause" for those "Paralegals" already working in the field.

(See SCR \_\_.03, which contains the "grandfather" clause pertaining to work experience.)

## COMMENTARY

At one of the first meetings of the Paralegal Task Force, it became obvious that to go forward the Task Force first had to define the term "Paralegal".

As a commencing point, the Task Force members reviewed the American Bar Association's (ABA) latest definition of the term "Legal Assistant". Some changes were suggested for use in the State of Wisconsin. Each Task Force member was asked to study this definition and prepare his or her own and return it to the chairperson for redistribution to all Task Force members. A "definition" committee then was appointed to assimilate this and other input and to draft a definition for use in Wisconsin.

Early in the committee's work, it was noted that the terms "Paralegal" and "Legal Assistant" often, but not invariably, are treated as synonyms. The ABA chose to define the term "Legal Assistant" rather than selecting the term "Paralegal". All of the Paralegals on the committee took the position that the proper term and definition that they sought was for "Paralegal". They pointed out that at many offices where they worked, "Paralegal" was the term given to the most qualified member of the staff, followed by Legal Assistant, Legal Secretary, Secretary and Receptionist.

As an example of the trend to acknowledge the evolution of the profession, a local professional organization, the Madison Area Legal Assistant Association elected to change its name to the Madison Area Paralegal Association. It was also pointed out that the State of Wisconsin had recently completed a survey to create professional-level position specifications for state employees performing legal support activities and had adopted the term "paralegal". Employees in these positions had previously been classified in the administrative assistant series. The survey did not affect the entry-level, two-tiered legal assistant series.

The State had concluded that many of the specifications originally developed in the late 1960's for legal support positions did not reflect the increased skill and complexity of the duties currently

being performed by some of its staff. The term “paralegal” was chosen as the classification title for objective and advanced level positions which independently performed specialized and complex legal research and analysis, drafted correspondingly sophisticated legal pleadings, as well as other activities in the delivery of legal services that would otherwise be performed by licensed attorneys. The specifications for the paralegal series included limited supervision by an attorney but specifically excluded the performance of clerical and routine tasks typically performed by legal secretaries or legal assistants for a majority of the time. While employees in existing positions were subsequently classified as paralegals, future applicants for paralegal position would require successful completion of civil service testing specific to the paralegal profession.

The committee met formally on October 30, 1996, with a view to preparing definition and that would meet with the approval of at least a majority of the committee. After considerable deliberation, a definition was proposed with the caveat that there would need to be a "grandfather clause" with a sunset provision. The purpose of the "grandfather clause" was to permit licensure of those experienced individuals who would qualify as Paralegals without having to take the required educational program to be established and recommended for future Paralegals.

The critical elements within the definition were that the individual was 1) qualified through education, training or work experience was 2) supervised by a licensed Wisconsin attorney; and was 3) capable of performing certain legal work that otherwise would have been performed by an attorney. The "grandfather clause" would ultimately allow for the deletion of the words "work experience".

The major hurdle in obtaining and drafting a definition for "Paralegal" was whether that definition included “. . . supervised by an attorney . . .” There was a difference of opinion within the Paralegal members of the Task Force. There was almost an even split between those who wanted the definition to include “. . . supervised by an attorney . . .” and those who wanted it left out. A lesser obstacle, but also discussed at some length, was whether or not the Paralegal could work independently

for an out-of-state attorney. Again, there was about an even split between the Paralegals supporting independence and those arguing that an attorney licensed in Wisconsin should still be supervising the Wisconsin licensed Paralegal. After considerable debate, the proposal finally voted on by the committee included the language requiring the supervision by a Wisconsin attorney.

The definition, as proposed by the committee was adopted by a 3-1 vote with one committee member, a Paralegal, dissenting. The dissenting Paralegal proposed a definition as a minority report to the Paralegal Task Force

Both at the committee level and again at the Task Force Committee level a provision for "specialty" Paralegals was discussed. In both instances, the majority believed it was premature to provide for "specialty" categories. If the program recommended by the Task Force is implemented it is foreseeable "specialty" areas of Paralegal work may evolve. A clear majority of the Task Force considers it presently is inappropriate to define areas of "specialty" for Paralegals.

The definition committee's majority and minority reports were presented to a regular meeting of the Paralegal Task Force. Again, the Task Force members had an opportunity to review the proposed definition and "grandfather clause" in advance. All of the elements felt to be critical by the committee were again discussed at length, with particular attention to the issue of Paralegal supervision by a Wisconsin attorney.

There was general discussion on each of the other elements by the Task Force. After considerable deliberation on the part of the entire Task Force, the preceding definition was adopted with two dissenting votes.

Subsection (2) regulates the use of the title "paralegal." The proposed rules do not seek to require the licensure of any individual employed or supervised by a lawyer whose duties fall within the definition contained in subsection (1). Rather, the proposed rules require licensure of individuals whose duties fall within the definition of subsection (1), and who propose to be known as "paralegals."

For example, a person whose job duties fall within subsection (1), but is referred to as a “legal nurse consultant” or “legal assistant” or “legal secretary” is not required to obtain or hold a paralegal license.

## SCR \_\_.02 Education and Training Required for Licensure

(a) Except as provided in SCR \_\_.03, no individual may be licensed as a paralegal in this state unless that individual has successfully completed post-secondary education and training that includes either of the following:

(1) An associates degree or bachelors degree from a qualified paralegal studies program; or

(2) a. An associates degree or bachelors degree in any discipline from any institution of post-secondary education which is accredited by an accrediting body recognized by the United States Department of Education; and

b. Not less than 18 semester credits of coursework offered by a qualified paralegal studies program with a minimum grade of "C" in each course, any portion of which may be a part of or in addition to the credits earned toward the foregoing degree, in the following areas:

1. 3 semester credits in legal research;
2. 3 semester credits in legal writing;
3. 1 semester credit in legal ethics;
4. 1 semester credit in Wisconsin litigation practice;
5. 6 semester credits in specific areas of substantive law;
6. Not less than 4 semester credits in any of the areas specified in subs. 1-5 of this subparagraph.

(b) In this chapter, "qualified paralegal studies program" means a program of paralegal or legal assistant studies offered by an institution of post-secondary education which maintains a 2-year or 4-year program of paralegal or legal assistant studies that is sanctioned by the Wisconsin Technical College System Board, is sanctioned by the Board of Regents of the University of Wisconsin System, is approved by the House of Delegates of the American Bar Association, or which is an institutional member of the American Association for Paralegal Education.

(c) In this chapter, "semester credit" means a minimum of 14 clock hours of classroom instruction in a qualified paralegal studies program.

## COMMENTARY

Paralegal professional organizations have long recognized that education should be a component of entry into the profession. While nationally there has been debate as to how the education will be validated, such as through testing or the completion of a degreed program, the committee has agreed that in Wisconsin a standard course of study should be required of all Paralegals.

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

To develop educational standards, the Task Force looked to various standard-setting organizations, namely, the National Association of Legal Assistants, the National Federation of Paralegal Associations, the American Association for Paralegal Education, and the American Bar Association. Since the ABA possesses national recognition as setting the standard for quality Paralegal education, the Task Force looked to ABA standards in developing educational standards for Paralegals licensed in Wisconsin.

The Task Force concluded however, that requiring graduation from an ABA-approved program could be detrimental to the profession since it might stifle the development of new Paralegal programs within the state. (A program must be in existence a minimum of two years before applying for ABA approval.) Instead, the Task Force analyzed the ABA guidelines and adopted the ABA's standard of a minimum of 18 credits of Paralegal course work. While the ABA does not specify which courses should be required, the Task Force recognized that preparation for the profession involves more than technical competency. Therefore, the Task Force set specific course standards that would help ensure the development of skills such as writing, critical thinking, and recognition of ethical issues. The Task Force accordingly recommended that course work include legal research, legal writing, Wisconsin litigation practice, and ethics. At the same time, the Task Force recognized the need for development of skills related to specific areas of law. Thus, the

Task Force included a requirement that six credits be in specific areas of law practice. The Task Force concluded that litigation is important to all areas of law; to ensure that graduates from non-Wisconsin programs are knowledgeable about Wisconsin litigation procedures, the litigation requirement is state-specific. One credit was considered sufficient since those Paralegals would be able to transfer the litigation fundamentals they learned into a setting outside Wisconsin.

While many large metropolitan-area law firms seek Paralegals with a four-year degree, the Task Force recognized that the majority of Wisconsin law firms are sole or small practices, which consider a four-year degree to be an extravagance. The Task Force saw nothing that suggests a two-year associate's degree provides an inappropriate educational background for Paralegals.

The American Association for Paralegal Education (AAfPE) is a national organization of Paralegal educators. To be a member, the program must be in "substantial compliance" with the ABA guidelines. Since Wisconsin will undoubtedly see Paralegals who have been educated out of state, and since the school may not be ABA approved, the AAfPE membership would serve as a guide for determining the quality of the program. AAfPE is well recognized among Paralegal educators. Some schools are members of AAfPE, some are ABA approved, and some (e.g., Lakeshore Technical College) are both. In the judgement of the Task Force, poor quality schools are not allowed membership into AAfPE, and they are unable to earn ABA approval.

### **SCR \_\_.03. Licensure Based Upon Experience**

(1) In addition to those who qualify to be licensed under SCR\_\_.02, an individual is eligible to be licensed as a paralegal in Wisconsin if that individual meets all of the following qualifications:

(a) The individual has a high school diploma or equivalent education at the time of application.

(b) The individual has been engaged in work as a paralegal for not less than 4800 hours at any time during the 5 years immediately preceding the time of application.

(c) The individual has completed at least 3 hours of approved continuing paralegal education or continuing legal education in the area of legal ethics and professional responsibility during the 12 months preceding the time of application.

(d) The individual makes application for licensure under this section within 3 years after the effective date of this chapter.

(2) The work experience required under sec. (1)(b) of this section shall be documented by the certification of the attorney or attorneys under whose supervision the work was performed, or by records of a regularly conducted activity. The form and content of the certification shall be prescribed by the licensing agency.

## COMMENTARY

SCR \_ .03 is referred to as the “grandfather clause” in various portions of the Task Force report.

### **Age/High School**

Originally a minimum age limit of 21 was proposed. The Task Force concluded it was necessary that, in addition to the 4,800 hours of work experience, the person have at least a high school education or its equivalent in order to knowledgeably perform paralegal duties. Since education and experience were agreed to be primary requirements for “grandfathering”, the age limit was eliminated as redundant.

### **Standard of Experience**

The Task Force settled on a standard of work experience that would be longer than a two-year associate’s degree. An hourly measure was adopted to give fair consideration to both full-time and part-time employment. The 4,800 standard is equivalent to 3 years of experience at an average of 32 hours per week and 50 workweeks per year. A 5-year “window” prior to application was chosen to recognize part-time employment and the possibility of leaves of absence.

### **Work Certification**

Two routes for documentation of work experience are provided. The first allows a supervising attorney to certify that the requisite work, or some portion of it, was performed. The second permits records of a regularly conducted activity (as the concept is understood in the Wisconsin Rules of Evidence) to be utilized.

### **Competency Testing**

The possibility of a formal examination process, conducted by the licensing agency, was discussed at length by the Task Force and was rejected. There are inherent problems in implementation because of the diversity of law specialties and the cost of creation of such an exam. Discussions noted the types of exams that are available now. The National Federation of Paralegal Associations and National Association of Legal Assistants have examinations, which the Task Force views as overly extensive and costly. The national exams also would have no state-specific questions. A Task Force member reported that the American Association of Paralegal Educators looked at entry level exams but has decided against them at this time.

The State of Wisconsin Department of Justice does have a civil service exam that could be adapted to test competency. It was the consensus of the Task Force that the Department of Justice exam, already administered as an evaluation of paralegal competency on a statewide level, might be the springboard for future licensure testing. Adaptation of that examination is not recommended at present.

### **Additional Course Requirements**

Extensive time was spent discussing educational programs and whether post-secondary education requirements should be established within the Grandfather Clause. A “crash course” of ABA programs was posited as a potential route for gaining 30-40 credit hours of classroom study. It was thought that if a bar was to be set in the education requirement, it should be addressed in the experience level as well. Opposition to this idea came from the notion that many experienced Paralegals would be unwilling to expend the money or time to obtain the additional education and would simply drop the title of Paralegal. Additionally the Task Force

concluded that employers would be unwilling to expend the projected sums of money to obtain this education for their already-employed and experienced Paralegals. This conclusion was based on a statewide survey of Paralegals covering numerous questions on licensure cost.

### **Ethics Requirement**

To help assure that grandfathered Paralegals are current on ethics, the Task Force concluded it was desirable to require 3 ethics credits be taken prior to submission of the application. The ethics education requirement is equivalent to that for attorneys in Wisconsin. Classes are currently provided by the State Bar, Paralegal Associations and the Legal Seminar Industry to give ample opportunity for Paralegals across the state to obtain the credits.

### **Limited Timeframe**

The Task Force concluded the grandfather option should be available to Paralegals who are currently in the field. Availability of an open-ended option was viewed as a disincentive to formal Paralegal education. A 3-year window of opportunity was selected as an appropriate length of time in which to make the paralegal industry aware of the requirement to allow for the 3 ethics credits to be taken and to process all the applications.

### **Special Circumstances**



### **Licensing Agency Authority**

Discussions by the Task Force also touched on a “Special Certification”. There was a concern regarding people hired with special training, i.e. nurse, tax accountant that have been used in the capacity of a Paralegal. The thought was that a Special Certification would come from an employing, duly-licensed Wisconsin lawyer as to the use of the applicant’s special expertise. Special Certifications would have been provided on a case by case basis to professionals whose former, verifiable educational degrees are in areas of expertise specifically suited to the attorney’s law practice. Special Certifications would be valid for the duration of employment with the supervising attorney only. This portion of the licensure would be open-ended. It would provide attorneys options that regularly hire nurses/tax accountant



etc. into their practice. Additional requirements were formulated and then discarded due to the complexity of scenarios that could fall under “special certification”. It was felt that if someone is being used as a Paralegal they should meet the requirements. It would be nearly impossible to create a criterion that would meet the number of individual possibilities.

### **SCR \_\_.04 Continuing Education Requirement**

(a) No individual may maintain a license as a paralegal in this state unless that individual does either of the following:

(1) Completes at least 10 hours of approved continuing paralegal education or continuing legal education during each reporting period, a minimum of 2 hours of which shall be in the area of legal ethics and professional responsibility; or

(2) Successfully completes with a minimum grade of "C" at least 1 semester credit from a qualified paralegal studies program during each reporting period.

(b) "Reporting period" means the 2-year period during which a paralegal must satisfy the Wisconsin continuing paralegal education requirement of this section. The reporting period for a paralegal licensed in an even-numbered year shall end on December 31 of each even-numbered year following the year in which the paralegal was licensed initially. The reporting period for a paralegal licensed in an odd-numbered year shall end on the December 31 of each odd-numbered year following the year in which the paralegal was licensed initially.

(c) "Hour" means a period of approved continuing paralegal education or continuing legal education consisting of not less than 50 minutes.

## COMMENTARY

To determine the educational requirements for continued licensing, the Task Force examined the continuing education requirements for attorneys licensed to practice in Wisconsin.

The Task Force recognized that attorneys, with their greater responsibilities and their (presumed) greater ability to pay for continuing education, should have more extensive continuing legal education requirements than Paralegals. After much debate, the Task Force adopted the standard of 10 continuing Paralegal education credits per two-year reporting period. This requirement would enable Paralegals to obtain the credits by yearly attending a one-day training.

To provide the greatest amount of flexibility for Paralegals to obtain continuing education relevant to their careers, the Task Force provided three methods for achieving the required hours: (1) continuing Paralegal education credits (2) continuing legal education credits, and (3) Paralegal course work. In addition, there is a requirement for continued training in ethics and professional responsibility.

The Task Force recognized that there is a concern regarding accessibility of continuing education for Paralegals who live in remote locations. Therefore, the Task Force recommends that the State Bar of Wisconsin work with the Wisconsin Technical College System to utilize the distance education technology of the Wisconsin Technical College Network to provide live interactive training at each of the Wisconsin Technical Colleges.

### **SCR \_\_ .05 Ineligibility**

No individual is eligible to be licensed as a paralegal in this state if any of the following conditions apply:

- (1) The individual's license to practice law in any state is under suspension or revocation.
- (2) The individual has been convicted of a crime involving moral turpitude.
- (3) The individual lacks good moral character.

## COMMENTARY

In March 1997 the Task Force formed a committee on standards and quality to consider the attributes which should be possessed by a person licensed as a Paralegal in Wisconsin. After extensive discussion the committee concluded that standards for licensure should be set in the following broad categories:

- General minimum requirements
- Education
- Training
- Work experience
- Continuing paralegal education

With the exception of the topic of general minimum requirements, the Task Force determined that each subject was of sufficient complexity (and in some cases of sufficient controversy) that separate committees should be constituted to study them and make recommendations.

The standards and quality committee initially recommended a minimum age requirement of 21 years. Subsequent deliberations refined the issue to call for an applicant for licensure to possess a high school diploma or equivalent plus 3 years of practice (in case of an application based on work experience) or a 2-year associates degree (in case of an application based on educational attainment).

The committee and the full Task Force concluded, for reasons considered self-evident, that a person licensed as a Paralegal should be of good moral character, utilizing the same

understanding of the term as is used for attorneys.

Similarly, the committee and the full Task Force determined that Paralegal licensure should not be available to persons who had been convicted of a crime involving moral turpitude. While licensed Paralegals will work under the supervision of attorneys under the regulatory scheme proposed by the Task Force, public trust and confidence in the honesty and fidelity of Paralegals is a paramount consideration.

Finally, both the committee and the Task Force concluded, and strongly recommend, that Paralegal licensure not be available to persons whose licenses to practice law are under revocation or suspension. The Paralegal rules of ethics promulgated by the Task Force closely parallel the rules of professional conduct for attorneys. The Task Force believes persons under professional discipline for failure to adhere to similar if not identical standards of conduct should not have recourse to Paralegal licensure as a temporary career expedient.

## SCR \_\_: 1 Rules of Ethics

### **Preamble: A Paralegal's Responsibility**

A paralegal is an individual qualified through education and training, employed or retained to perform substantive legal work, supervised by an attorney licensed to practice law in this state, requiring a sufficient knowledge of legal concepts that, absent the paralegal, the attorney would perform the work.

As an integral partner in the delivery of legal services, the paralegal has a special responsibility for the quality of justice provided. The paralegal through his/her work with the supervising attorney seeks a result that is advantageous to the client but consistent with the requirements of honest dealings with others.

In all professional functions a paralegal should be competent, prompt and diligent. A paralegal should, whenever possible, assist in the communication with a client concerning the representation. A paralegal should keep in confidence information relating to representation of a client except as far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A paralegal's conduct should conform to the requirements of the law, both in professional service to clients and in the paralegal's employment and personal affairs. A paralegal should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A paralegal should demonstrate respect for the legal system and for those who serve it, including attorneys, judges and public officials. While it is a paralegal's duty, as a private citizen, when necessary to challenge the rectitude of official action, it is also the paralegal's duty to uphold the legal process.

As a public citizen, a paralegal should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a licensed profession, a paralegal should cultivate knowledge in reform of the law and work to strengthen legal education. A paralegal should possess integrity, professional skill and dedication to the improvement of the legal system and should strive to enhance the paralegal role in the delivery of legal services. A paralegal should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A paralegal should aid the legal profession in pursuing these objectives.

Many of the paralegal's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as in substantive and procedural law. However, a paralegal is also guided by personal conscience and the approbation of professional peers. A paralegal should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

In the nature of law practice, however, conflicting responsibilities are encountered. 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 judgement and loyalty to the client. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.

## **Scope**

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of assisting in legal representation and of the law itself. Some of the rules are imperatives; cast in the terms of "shall" or "shall not". These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may", are permissive and define areas under the rules in which the paralegal has professional discretion. No disciplinary action should be taken when the paralegal chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the paralegal and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a paralegal's professional role.

Furthermore, for purposes of determining the paralegal's role in relationship to an attorney's authority and responsibility, principles of substantive law external to these rules determine whether a client-attorney-paralegal relationship exists.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a paralegal's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a paralegal often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed by a violation, and the severity of a sanction, depend on the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to paralegals and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a paralegal's self-assessment, or for sanctioning a paralegal under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of paralegals or the extra-disciplinary consequences of violating such duty.

## **Definitions**

"Assistance" or "Assist" as used in these Rules means to perform various tasks relating to the practice of law under the supervision of an attorney.

"Attorney" as used in these Rules means an attorney licensed or otherwise authorized to practice law in the State of Wisconsin.

"Belief" or "Believes" means that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from the surrounding circumstances.

"Consult" or "Consultation" as used in these Rules means an attorney or attorneys in a private firm, attorneys employed in the legal department of a corporation or other organization and attorneys employed in a legal services organization.

"Firm" or "Law Firm" as used in these Rules means an attorney or attorneys in a private firm, attorneys employed in the legal department of a corporation or other organization and attorneys employed in a legal services organization."

"Fraud" or "Fraudulent" means conduct with a purpose of deceiving someone and does not mean merely negligent misrepresentation or failure to inform another of relevant information.

"Knowingly", "Known", or "Knows" means actual knowledge of the fact in question. A person's knowledge may be inferred from the surrounding circumstances.

"Reasonable" or "Reasonably" when used in relation to conduct by a paralegal relates to the conduct of a reasonably prudent and competent paralegal.

"Reasonable belief" or "Reasonably believes" when used in reference to a paralegal means that a paralegal of reasonable prudence and competence could believe the fact in question.

"Reasonably should know" when used in reference to a paralegal means that a paralegal of reasonable prudence and competence should know the fact in question.

"Substantial" when used in reference to degree or extent means a material matter of clear and weighty importance.

"Tribunal" includes all courts and other adjudicatory bodies.

### **SCR \_\_:1.1 Competence**

A paralegal shall provide competent assistance to the attorney's client. Competent assistance requires the knowledge, skill, thoroughness and preparation reasonably necessary.

### **SCR \_\_:1.2 Scope of Representation**

(a) A paralegal shall abide by a client's decisions concerning the objectives or representation by the attorney, subject to paragraphs (c), (d) and (e), and shall consult, as directed by the attorney, with the client as to the means by which they are to be pursued.

(b) The paralegal's assistance in representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A paralegal may assist the attorney in limiting the objectives of the representation if the client consents after consultation with the attorney.

(d) A paralegal shall not counsel a client to engage, or assist a client, in conduct that the paralegal knows is criminal or fraudulent, but a paralegal may be involved in the discussion of legal consequences of any proposed course of conduct with a client and may assist, under the

direction of an attorney, a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a paralegal knows that a client expects assistance not permitted by the Rules of

Professional Conduct or other law, the paralegal shall consult with the attorney regarding the relevant limitations on the paralegal's conduct.

**SCR \_\_:1.3 Diligence**

A paralegal shall act with reasonable diligence and promptness.

**SCR \_\_.1.4 Communication**

(a) A paralegal shall assist the attorney in keeping a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A paralegal shall assist the attorney in explaining a matter to the extent reasonably necessary to permit the client to make informed decisions.

**SCR \_\_:1.6 Confidentiality of information**

(a) A paralegal shall not reveal information relating to a client unless the client consents and after consultation with the attorney, except for disclosures that impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) After consultation with the attorney, a paralegal may reveal such information to the extent the paralegal reasonably believes necessary to establish a claim or defense on behalf of the paralegal in a controversy between the paralegal and the client, to establish a defense to a criminal charge or civil claim against the paralegal based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the paralegal's assistance in the representation of the client.

**SCR \_\_:1.8 Conflict of interest: prohibited transactions**

(a) A paralegal shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless, with the attorney's knowledge and consent:

- (1) the transaction and terms on which the paralegal acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

- (b) The paralegal shall not use information acquired during the attorney's representation of a client to the disadvantage of a client unless the client consents after consultation with the attorney.
- (c) Prior to the time the attorney concludes his or her representation of a client, a paralegal shall not make or negotiate an agreement giving the paralegal literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**SCR \_\_:1.10 Imputed disqualification: general rule**

- (a) When a paralegal becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that paralegal, or a firm with which the paralegal was associated, had previously represented a client whose interests are materially adverse to that person and about whom the paralegal had acquired information protected by Rules 1.6 and 1.9 (b) that is material to the matter.
- (b) When a paralegal has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interest materially adverse to those of a client unless:
  - (1) the matter is the same or substantially related to that in which the formerly associated paralegal worked on; and
  - (2) Any paralegal remaining in the firm has information protected by Rules 1.6 and 1.9 (b) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

**SCR \_\_:1.11 Successive government and private employment**

- (a) Except as law may otherwise expressly permit, a paralegal shall not assist in the representation of a private client in connection with a matter in which the paralegal participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No attorney in a firm with which that paralegal is associated may knowingly undertake to continue representation in such a matter unless:
  - (1) the disqualified paralegal is screened from any participation in the matter; and
  - (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.
- (b) Except as law may otherwise expressly permit, a paralegal having information that the paralegal knows is confidential government information about a person acquired when the paralegal was a public officer or employee, may not assist in the representation of a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that paralegal is associated may undertake or continue representation in the matter only if the disqualified paralegal is screened from any participation in the matter.

(c) Except as law may otherwise expressly permit, a paralegal serving as a public officer or employee shall not:

- (1) participate in a matter in which the paralegal participated personally and substantially while employed in nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the paralegal's stead in the matter; or
- (2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the paralegal is participating personally and substantially.

(c) As used in this rule, the term "matter" includes:

- (1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
- (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

**SCR \_\_:1.12 Former judge or arbitrator**

(a) A paralegal shall not assist in the representation of anyone in connection with a matter in which the paralegal participated personally and substantially as a judge or other adjudicative officer.

(b) Except as stated in paragraph (e), a paralegal shall not assist in the representation of anyone in connection with a matter in which the paralegal participated personally and substantially as an arbitrator or as a clerk to a judge, other adjudicative officer or arbitrator, unless all parties to the proceeding consent after disclosure.

(b) A paralegal shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the paralegal is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A paralegal serving as a clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the paralegal has notified the judge, other adjudicative officer or arbitrator.

(d) If a paralegal is disqualified by paragraph (a) or (b), no attorney in a firm with that paralegal is associated may knowingly undertake or continue representation in the matter unless:

- (1) the disqualified paralegal is screened from any participation in the matter; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(e) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

**SCR \_\_:3.1 Meritorious claims and contentions**

(a) In assisting the attorney in the representation of a client, a paralegal shall not:

(1) knowingly advance a claim or defense that is unwarranted under existing law, except that the paralegal may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;

(2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or

(3) take action on behalf of the client when the paralegal knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

**SCR \_\_:3.2 Expediting litigation**

A paralegal shall make reasonable efforts to expedite litigation consistent with the interests of the client.

**SCR \_\_:3.3 Candor toward the tribunal**

(a) A paralegal shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(2) fail to disclose a fact to a tribunal legal authority in the controlling jurisdiction known to the paralegal to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) assist the attorney in the offering of evidence that the paralegal knows to be false. If a paralegal becomes aware of material and false evidence, the paralegal shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

**SCR \_\_: 3.4 Fairness to opposing party and counsel**

A paralegal shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A paralegal shall not counsel or assist another person to do any such act;

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) In pretrial procedure, assist in the making of a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

**SCR \_\_:3.5 Impartiality and decorum of the tribunal**

A paralegal shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) Communicate ex parte with such a person except as permitted by law; or

(c) Engage in conduct intended to disrupt a tribunal.

**SCR \_\_:3.7 Paralegal as witness**

(a) A paralegal shall not assist an attorney at a trial in which the paralegal is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) without the paralegal's assistance a substantial hardship to the client would result.

**SCR \_\_:3.9 Advocate in Nonadjudicative Proceedings**

A paralegal representing a client, under the direction of an attorney, before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4 (a) through (c), and 3.5.

**SCR \_\_:3.10 Threatening criminal prosecution**

A paralegal shall not present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter.

**SCR \_\_:4.1 Truthfulness in statements to others**

In the course of assisting the attorney, a paralegal shall not knowingly:

(a) make a false statement of a material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

**SCR \_\_:4.2 Communication with person represented by counsel**

A paralegal shall not communicate about the subject of the representation with a party the paralegal knows to be represented by another attorney in the matter, unless the paralegal has the consent of the other attorney or is authorized by law to do so.

**SCR \_\_:4.3 Dealing with unrepresented person**

In dealing on behalf of a client with a person who is not represented by counsel, a paralegal shall not state or imply that the paralegal is disinterested. When the paralegal knows or reasonably should know that the unrepresented person misunderstands the paralegal's role in the matter, the paralegal shall make reasonable efforts to correct the misunderstanding.

**SCR \_\_:4.4 Respect for rights of third persons**

In assisting the attorney, a paralegal shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

**SCR \_\_:6.1 Pro bono publico service**

A paralegal should support and participate in the provision of pro bono services under the supervision of an attorney. A paralegal may discharge this responsibility by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

**SCR \_\_:7.1 Communications concerning a paralegal's services**

- (a) A paralegal shall not make a false or misleading communication about the paralegal services. A communication is false or misleading if it:
- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
  - (2) is likely to create an unjustified expectation about the workload the paralegal can complete, or states or implies that the paralegal can achieve results by means that violate the Rules of Professional Conduct or other law;
  - (3) compares the paralegal's services with other paralegal's services, unless the comparison can be factually substantiated; or

- (4) contains any paid testimonial about or paid endorsement of, the paralegal without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.
- (b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (c) Any communication made pursuant to this rule shall include the name of at least one paralegal responsible for its content.

**SCR \_\_:7.2 Advertising**

- (a) Subject to the requirements of Rule 7.1, a paralegal may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through direct-mail advertising distributed to assist an attorney and the provision of cost effective legal services.
- (b) A paralegal shall not give anything of substantive value to a person for recommending the paralegal's services, except that a paralegal may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit paralegal referral service or other similar organization.

**SCR \_\_:7.3 Communication of fields of practice**

A paralegal may communicate to attorneys that the paralegal specializes in a particular field of law based on education and or experience.

**SCR \_\_:7. 5 Firm names and letterheads**

- (a) A paralegal shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a paralegal in a free-lance practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
- (b) The name of a paralegal holding a public office shall not be used in the name of a paralegal firm, or in communications on its behalf, during any substantial period in which the paralegal is not actively and regularly practicing with the firm.
- (c) Paralegals may state or imply that they provide services in a partnership corporation or other organization only when that is the fact.

**SCR \_\_:8.1 Disciplinary matters**

A paralegal in connection with a disciplinary matter shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have

arisen in the matter, or knowingly fail to respond to a lawful demand for information from the disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

**SCR \_\_:8.3 Reporting professional misconduct**

- (a) A paralegal having knowledge that another paralegal has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that paralegal's honesty, trustworthiness or fitness as a paralegal in other respects, shall inform the appropriate professional authority.

**SCR \_\_:8.4 Misconduct**

It is professional misconduct for a paralegal to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the paralegal's honesty, trustworthiness or fitness as a paralegal in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) State or imply an ability to influence improperly a government agency or official;
- (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (f) Violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of paralegals; or
- (g) Violate the paralegal's oath.

**SCR \_\_:15 Paralegal's Oath**

The oath or affirmation to be taken by the paralegal shall be in substantially the following form:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, I will maintain the confidence and preserve inviolate the secrets of the client;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from a consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

## COMMENTARY

For many years attorneys have been regulated in the practice of law by a comprehensive set of rules found generally in SCR Chapter 20 as administered by the Board of Attorneys Professional Responsibility. The work of the Task Force has been to investigate and make recommendations to the Board of Governors on what role paralegals can and should play in the daily practice of law. As this group of professionals is given and accepts greater responsibility in serving the legal needs of the client, recognition must be given to the need for rules governing the ethical responsibility of the paralegal. Relaxation of the oversight and control by a supervising attorney requires the promulgation of a comprehensive set of rules, similar to those applied to attorneys that regulate the paralegals' profession and serve to protect the public.

Preceding this commentary is a set of rules that regulate the paralegal profession and ensures that such practice protects and serves the client. The starting point for these new rules has been the Attorneys' Rules of Professional Conduct. The preceding rules follow the attorneys' rules and deviate for nomenclature, to remove inapplicable rules, and to recognize that paralegals ultimately work under the supervision and direction of an attorney licensed to practice law in this State.

First and foremost in the drafting of these proposed rules is the recognition that a paralegal will at all times operate under the supervision of an attorney. These rules are not meant to endow the paralegal with an independent right to practice law. The language "in consultation with an attorney" reiterates this point repeatedly throughout the draft rules.

The Task Force also recognized that working "in consultation with an attorney" could

have various meanings. “Consultation”, as that term has been used by the Task Force, is meant to require the paralegal to obtain the knowledgeable consent or approval of the attorney for whom he or she is working. This approval and consent can be made only in a close professional relationship between the paralegal and attorney. This consultation and the ensuing discussion should be made with respect to each significant decision that is made. These rules do not sanction a situation in which the attorney gives the paralegal a blanket approval which may allow the paralegal to in effect work unsupervised.

Additionally, the Task Force chose to delete the word “representation” which was contained in the attorney’s rules, from the draft paralegal rules. In its place the Task Force has used the word “assistance”. Again, the Task Force felt the paralegal, by working under the supervision of an attorney, does not so much “represent” the client, but “assists” the attorney in his or her representation of the client. These rules are not meant to give paralegals a license to practice law nor to represent clients with respect to their legal problems.