

Why Indiana lawyers should be in favor of paralegal registration

Eighteen states currently have some form of regulation of paralegals. They have all set minimum standards for paralegal education, training and experience. The common purposes of these state programs are promotion of competence and standards of professional responsibility, improvement of the quality of legal service, and making legal services more readily available to the public.

There are three basic categories of paralegal regulation: registration, certification and licensure. Registration involves listing names with a designated agency on a voluntary or mandatory basis with minimum standards for education, training and experience.¹ Certification is a method of verifying knowledge and skill against predetermined minimum standards. Professional certification involves testing, regular update and renewal. Licensure is governmental permission granted to persons deemed to have met prescribed qualifications to engage in particular categories of profession or occupation. Licensure is normally enacted by legislation.

In 2000, there were 1,720 paralegals in Indiana.² By 2012, the number of paralegals had increased to 3,720.³

A 2008 survey of members of the Indiana Paralegal Association, Inc. (IPA)⁴ provides a snapshot of paralegal utilization in Indiana, albeit predominately Indianapolis and central Indiana. 17 percent of respondents were members of the Indiana State Bar Association, and 34 percent were members of the Indianapolis Bar Association. Of the 216 responses, 61 percent had been employed as a paralegal for more than 10 years, and

17 percent more than 21 years. 41 percent of the respondents had an associate's degree; 38 percent had a bachelor's degree; and 4 percent reported "some college." 72 percent reported having a degree or certificate in paralegal studies from an ABA-approved program. 87.5 percent had NFPA PACE examination certification, and 12.5 percent had NALA paralegal examination certification. 86.57 percent were employed full time as a paralegal, and 6.48 percent were employed part time. 35.21 percent were employed at organizations with less than 10 attorneys; 21.13 percent worked at entities with 10-24 attorneys; 14.08 percent with 25-49 attorneys; and 25.35 percent at entities having more than 100 attorneys. 13.27 percent of the responding paralegals had a paralegal supervisor, and 86.73 percent had no designated paralegal supervisor. 64.29 percent of the survey respondents reported that their employers billed paralegal time to clients, and 5.71 percent billed sometimes.⁵

Efforts for registration in Indiana

Indiana has a limited form of regulation of paralegals and administrative assistants. Rule 5.3 of the Indiana Rules of Professional Conduct ("IRPC") sets out an attorney's responsibilities regarding non-lawyer assistants.⁶ Indiana lawyers are required to make reasonable efforts to establish policies and procedures designed to provide reasonable assurances that non-lawyers in the firm will act in a way compatible with the IRPC.⁷ Guidelines 9.1 through 9.10 of the IRPC provide specific guidance for the utilization of paralegals.⁸ However, there are no standards for education, training, experience or continuing legal education.⁹

Following extensive work by a coalition consisting of the Indiana Paralegal Association (IPA), the Michiana Paralegal Association (MPA), Northeast Indiana Paralegal Association (NIPA) and members of the Indiana State Bar Association, a proposal was submitted in 2003 to the Indiana Supreme Court Rules Committee proposing a new Rule 2.2 to the Rules of Admission & Discipline, which proposed a process for paralegal registration, which included minimum standards for education and work experience.¹⁰ The Indiana Supreme Court subsequently published proposed Rule 2.2 for public comment, which period ended April 3, 2006.¹¹ In 2008, the Supreme Court indicated that it was "disinclined to promulgate the rule at this time."¹² The Court cited the fact that the ISBA House of Delegates failed to endorse the proposal as reason enough not to act.¹³ It further advised that "should the professional assessment evolve over time, the Court would be open to reexamining the matter."¹⁴

The benefits of registration

Indiana attorneys have "a special responsibility for the quality of justice."¹⁵ We are professionally bound to "seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession."¹⁶ A process of registration of paralegals, whether mandatory or voluntary, that includes minimum standards for education, training and work experience, together with continuing education requirements, will improve the quality of legal service by promoting competence and high standards of professional responsibility.

Theoretically, in Indiana anyone can call himself or herself a paralegal and begin working as a



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paralegal without formal education and training subject to supervision of an attorney. A paralegal is defined as a person who is “qualified through education, training or work experience; and employed by a lawyer, law office, governmental agency or other entity to work under the direction of an attorney in a capacity that involves the performance of substantive legal work that usually requires a sufficient knowledge of legal concepts and would be performed by the attorney in the absence of the paralegal.”¹⁷

Under the present system, there is a glaring lack of uniformity in “who is qualified” to work as a paralegal in Indiana. There are no standards or minimum requirements for “education, training or work experience.” Qualifications are determined subjectively by the

attorney who assumes responsibility for each paralegal working under his or her direction and supervision. The public’s interest would be greatly served by establishing uniformity in standards and qualifications for paralegals throughout Indiana. The use of objective standards to measure training, knowledge, experience and skill would assist the bar in identifying qualified paralegals who demonstrate a commitment to excellence.

Registration will also benefit Indiana attorneys with responsibilities for paralegals under IRPC, thereby reducing potential ethical violations, unauthorized practice of law violations and malpractice claims. Rule 5.3 provides that a lawyer shall: make reasonable efforts to ensure that a legal assistant’s conduct is compatible with the professional obligations of the

lawyer; be responsible for the conduct of the legal assistant that would be a violation of the IRPC if engaged in by a lawyer; and make reasonable efforts to establish policies and procedures designed to provide reasonable assurances that non-lawyers in the firm will act in a way compatible with the IRPC.¹⁸ The growth in utilization of paralegals in Indiana increases the need for establishing guidelines and standards. A system of registration will assist lawyers in hiring practices by providing a benchmark for qualifications that would already be verified for potential employers.

There is an ethical obligation to delegate tasks to lower billing personnel whenever possible.¹⁹ The employment of paralegals furnishes a means by which a lawyer may

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expand the public's opportunity for utilization of legal services at a reduced cost. Attorneys use paralegals to perform tasks that might otherwise be accomplished by a lawyer with a higher billing rate. Tasks that can be performed by non-billing personnel, such as secretaries, should never be billed at the attorney or paralegal rate.²⁰

Work that is wholly clerical or secretarial should not be billed at the attorney's or the paralegal's rates.²¹ Paralegal time can only be compensated when paralegals are performing tasks that otherwise would be performed by an attorney.²²

Registration would provide recognition of the essential and substantial contribution that para-

legals render in providing legal services to the public at an affordable price. Indiana requires licensure for a wide variety of professions for the protection and benefit of the public. Licensure enhances the public's confidence in utilization of professional services. Why wouldn't we do the same for the legal profession in providing paralegal services to the public?

Documenting the benefits of regulation

Ontario, Canada, was the first jurisdiction in North America to regulate paralegals.²³ The Law Society of Upper Canada regulates attorneys and paralegals pursuant to a "mandate to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario."²⁴ The Law Society assumed responsibility for the regulation of more than 4,000 paralegals in 2007 at the request of the Ontario government.²⁵ In June 2012, the Law Society of Upper Canada released the results of a five-year study, reporting the success of paralegal regulation.²⁶ As part of the review process, the Law Society solicited responses from paralegals, lawyers, legal organizations and members of the public.²⁷ A consultant conducted extensive research, including focus groups with paralegals and members of the public who had used paralegal services.²⁸ The review assessed whether regulation "had established fair and transparent licensing processes, reasonable standards of competence and conduct, and fair and transparent investigation and disciplinary process for paralegals."²⁹ It also examined the effect that regulation had on licensed paralegals and the public who used their services.³⁰ Law Society Treasurer

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Thomas G. Conway reported that “[r]esults show that paralegals are well on their way to establishing a prestigious and well-regarded profession. ... Paralegal regulation has provided consumer protection while maintaining access to justice.”³¹

Indiana’s neighbors

Among states that have some form of regulation, the programs range from voluntary qualification to mandatory, minimum education standards and continuing legal education.

Kentucky

Kentucky has established a procedure for paralegal certification pursuant to Kentucky Supreme Court Rule 3.700.³² The Kentucky Paralegal Association (“KPA”) implemented Rule 3.700 in the fall of 2010 through establishment of the voluntary Certified Paralegal Program.³³ The KPA Certified Paralegal Program sets minimum training, work experience and education requirements for eligibility to seek designation as a Certified

Kentucky Paralegal (“CKP”) by passing the CKP examination.³⁴ Applicants submit documentary verification of education and work experience requirements and a nonrefundable fee of \$100.³⁵ KPA membership is not required to sit for the exam, but, once certified, KPA membership is required to maintain CKP status.³⁶ A CKP must earn a minimum of eight credit hours of KPA-approved continuing legal education annually, which must include two credit hours of the Paralegal Professional Standards of Conduct.³⁷ Credits must be reported on a form to the Continuing Paralegal Education (“CPE”) Committee.³⁸ The CKP Program (“CKPP”) is regulated, administered and coordinated by the KPA’s Certification Committee (“KPACC”).³⁹

Administration of the CKPP certification process is done inexpensively over the Internet on the Kentucky Paralegal Association’s website, and exam study materials are free.⁴⁰ There was so much support for establishing the Certified Kentucky Paralegal Program that

it “was developed at virtually no cost.”⁴¹

Ohio

The Ohio State Bar Association (“OSBA”) has established a voluntary credentialing program for paralegals.⁴² The certification is good for four years.⁴³ Individuals that meet the OSBA definition of “paralegal” are eligible to take the prescribed written examination, which was first offered in 2007.⁴⁴ Upon successful passage, an eligible individual is designated an “OSBA Certified Paralegal.”⁴⁵ The credential, together with a specified logo, is authorized for use by a Certified Paralegal, pursuant to the Supreme Court of Ohio’s rules.⁴⁶ Eligibility for OSBA Certified Paralegals includes a continuing legal education component of 12 hours in the three years preceding application.⁴⁷

North Carolina

One of the most successful state paralegal programs is the Plan for Certification of Paralegals approved by the North Carolina State Bar and adopted by the North Carolina Supreme Court in 2004 (the “Plan”).⁴⁸ 5,479 individuals have become certified through the end of 2011.⁴⁹ The North Carolina State Bar is a state government agency.⁵⁰ The Plan has been so financially successful that it has made a \$500,000 contribution to the construction of the new North Carolina State Bar Building⁵¹ and a \$100,000 contribution on Oct. 21, 2011 to the North Carolina IOLTA program.⁵² The North Carolina State Bar has observed the continuing success of the Plan and the annual growth in the number of certified paralegals.⁵³

The Plan is administered by a Board of Paralegal Certification, which is a standing committee of the North Carolina State Bar Council.⁵⁴ The Plan neither

precludes an individual from calling himself or herself a paralegal, nor expands the authority of paralegals.⁵⁵ Application for and approval of continued certification is required annually prior to the end of each certification period. The requirements for renewal are a completed recertification application; a \$50 renewal fee; and 6.0 hours of continuing education with at least one of those hours in ethics. (A fee of \$125 must accompany the initial application for certification, and there is a \$50 exam fee.)⁵⁶

Conclusion

As our esteemed former Chief Justice said in referring to Indiana's place in American court reform: "rarely first, occasionally last, frequently early."⁵⁷ With respect to improving the practice of law through the adoption of paralegal registration, Indiana is neither first nor early, but we can avoid being last. The Indiana Supreme Court has left the matter of paralegal regulation squarely with the Indiana bar. Do we move providing legal services to the public to a higher level, or do we simply do nothing? We charge the public for paralegal time and services, yet we have no minimum standards or uniform criteria for paralegal education, training and experience. Indiana has no continuing education requirements for paralegals. The time has come for our bar to take action and to demonstrate our commitment to excellence. We need to build upon the success of the Affiliate Membership Committee of the Indiana State Bar Association. The Affiliate Membership Committee is currently in the process of reviewing various state models and proposals to find the "right size" program for Indiana in order to take the next step – the best step for Indiana. 🇺🇸

1. Catherine R. Durgin, "Getting Legal With Paralegals," *ABA Business Law Today*, Vol. 16, No. 3 (2007).
2. Ind. Dept. of Workforce Development.
3. ParalegalEDU.org (www.paralegedu.org), "Becoming a Paralegal in Indiana" (citing 2010 report of the Bureau of Labor Statistics).
4. 2008 Ind. Paralegal Assoc. survey.
5. *Id.*
6. See Ind. Professional Conduct Rule 5.3.
7. Prof. Cond. R. 5.3 (Comment 2).
8. Prof. Cond. R. 5.3 & Guidelines 9.1-9.10.
9. Prof. Cond. R. 5.3; Guideline 9.9.
10. Correspondence from Thomas A. Pyrz to E. Spencer Walton Jr. and Cathy D. Canny (Aug. 27, 2008).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. See Ind. Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities, ¶1.
16. Prof. Cond., Preamble: A Lawyer's Responsibilities, ¶6.
17. Ind. Code §1-1-4-6(a) (2012).
18. Prof. Cond. R. 5.3.
19. See ABA Model Rules of Professional Conduct Rule 1.5, Comments at p. 73.
20. *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989).
21. *Missouri v. Jenkins by Agyei*, *supra*, 491 U.S. at 287 n. 9.
22. *Shell Oil Co. v. Meyer*, 684 N.E.2d 504, 525 (Ind. Ct. App. 1997) *transfer granted, opinion vacated*, 698 N.E.2d 1183 (Ind. 1998) and *aff'd in part, vacated in part*, 705 N.E.2d 962 (Ind. 1998).
23. Press Release, "Success of Paralegal Regulation Highlighted in Report," Law Society of Upper Canada (June 28, 2012).
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. KY ST S CT Rule 3.700.
33. Professional Standards and Certification Program, KPA (adopted by KPA Aug. 2010, amended Sept. 2012).
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. Del O'Roark, "Is Your Paralegal a Certified Kentucky Paralegal?" *Bench & Bar*, p. 28 (Jan. 2011).
41. *Id.*
42. www.ohioabar.org/General%20Resources/ParalegalStandardsamendments2011_December.pdf
43. *Id.*
44. *Id.*
45. www.ohioabar.org/ForLawyers/Certification/Paralegal/Pages/StaticPage-785.aspx
46. *Id.*
47. *Id.*
48. www.nccertifiedparalegal.org/faq.asp
49. North Carolina Paralegal Certification Program overview PowerPoint (April 20, 2012), North Carolina State Bar, www.ncbar.gov.
50. www.ncbar.com
51. Correspondence from Alice Neece Mini, Asst. Executive Director and Ethics Counsel, Director of CLE, Specialization & Paralegal Certification, North Carolina State Bar, to Edna M. Wallace (May 8, 2012). Also, see *Carolina Paralegal News*, November 2009, p. 8, "Paralegals' gift to N.C. Bar expresses thanks for agency's support," nclawyersweekly.com/wp-files/cpn-pdfs/cpn-november2009.pdf.
52. nclawyersweekly.com/paralegal/2011/12/02/paralegal-board-donates-100k-to-nc-iolta (Dec. 2, 2011).
53. *Id.*
54. North Carolina Paralegal Certification Program overview PowerPoint (April 20, 2012), North Carolina State Bar, www.ncbar.gov.
55. *Id.*
56. *Id.*
57. Chief Justice Randall T. Shepard, 2006 "State of the Judiciary" (Jan. 12, 2006).

On 10/17, don't miss @ French Lick

Just the Facts, Ma'am ... Facts & Fiction About Paralegal Registration" (1.0 hr. NLS), 1:30-2:30 p.m., sponsored by the ISBA Affiliate Membership Committee:

Indiana paralegals have begun to explore paralegal certification programs, looking for an approach that is neither complicated nor inconsequential, but just right for Indiana. Come to this session to learn about North Carolina's success in launching a voluntary paralegal certification program. Bring your questions about starting such a program and prepare to imagine the benefits to your office and firm. Our guest speaker will be Kelly Farrow, assistant director, Paralegal Certification, N.C. State Bar. 🇺🇸