

§ 2.3

Paralegal Education and Regulation

Protecting the Public or Limiting Opportunity?

Licensing

For many years, members of the paralegal profession have struggled with the issue of whether paralegals should be regulated. This would involve some form of licensing. The *National Association of Legal Assistants – Paralegals* (NALA) and the *National Federation of Paralegal Associations* (NFPA), the two largest national paralegal associations, approach the question from different positions with NALA being most fervently in favor of regulation. NALA has long offered a national certification examination. Those who pass the exam are authorized to use the initials “C.L.A.” after their names. (The initials “C.L.A.” have been patented, but the term “Certified Legal Assistant” is not patented, since one may be certified by other entities besides NALA).

Both NALA and NFPA are private organizations and have no power to require members of the profession to submit to regulation or to take their unofficial certification exams. Some groups, including some local paralegal associations, have attempted to convince state legislatures to license paralegals. However, states have been reluctant to require licensing.

There have been two main arguments against licensing. First, the primary reason for licensing a profession is protection of the public. Electricians, doctors, and plumbers are licensed because an incompetent individual can do damage to the client. But does the public need protection from paralegals? Since paralegals are not allowed to give legal advice, with or without licensing, who is being protected? In fact, the vast majority of paralegals work under the direction of an attorney. The public is protected by the attorney’s responsibility and liability to the client. This is called the doctrine of *respondeat superior*. Second, licensing is being used by some as a means of “job protection,” an attempt to make it more difficult to enter the field to protect current members of the profession. Job protection is not a valid motive or justification for licensing.

Paralegal Education

There are hundreds of paralegal programs in the United States usually taking one of these forms:

- *An undergraduate certificate program:* A paralegal certificate for graduates with only a high school diploma or GED
- *A post-baccalaureate certificate program:* A certificate for graduates with college degrees
- *A two-year associate’s degree program:* A popular form of paralegal study involving general educational requirements as well as paralegal-related courses
- *A four-year bachelor’s degree program:* A relatively new form of paralegal education providing a full degree

The *American Bar Association* (ABA) does not accredit any paralegal program. The ABA does, however, have an approval process. The overwhelming majority of paralegal programs have chosen *not* to seek ABA approval. In fact, the approval process has been somewhat controversial. Questions regarding the ABA approval process have centered on whether attorneys should be the entity overseeing paralegal education.

Some feel that attorneys are the most logical oversight entity for the paralegal profession and that the ABA would be the logical instrument for setting educational standards. There are others, however, who feel that attorneys, and the ABA, could face conflicts of interest. If the ABA controls the education of paralegals, whose interest will the organization protect: that of paralegals or that of attorneys? Should the paralegal profession submit itself to control by the ABA, an organization that will not even allow paralegals to become voting members?

Because of what some consider to be the ABA's inherent conflict, the cost of ABA approval, and questions regarding the ABA's educational goals for paralegal programs, the great majority of schools have opted out of the approval process. Some schools, however, value ABA approval as a method of indicating to potential employers that the program offers a certain standard of educational experience, especially those schools that are not top tier, major universities. Logically, then, community college offerings are the most common form of ABA approved programs. Programs offered by highly respected institutions are much less likely to seek ABA approval. The credibility of the program is assured by the name of the school on the certificate or diploma.

Attorney Preferences for Paralegal Education

Most importantly, how do attorneys view the various forms of paralegal education? Is one form preferred over another? How does one determine what kind of education attorneys prefer? The most straight forward means of determining the value attorneys place on paralegal education is to ask the following: At what rate are paralegals compensated, and is there a difference in compensation based on the type of education?

The *National Association of Legal Assistants* (NALA) conducts a Salary and Compensation Survey approximately every two years. Since at least 1996, the following trends have been established:

1. *Those in the profession who hold paralegal certificates (either undergraduate or post-baccalaureate) have been the best compensated paralegals in each and every survey*
2. *Paralegal certificate graduates earn from ten to seventeen percent more in compensation than paralegals possessing either Associate's or Bachelor's degrees in paralegal studies*

Why are those with paralegal certificates so much better compensated than paralegals with degrees in paralegal studies? The answer, it seems, is quite simple. *Attorneys prefer paralegals with skills*, and certificate programs are best at developing those skills. Thus, paralegal certificate program graduates tend to eventually earn more than those from other programs. For paralegals, and for their attorney/employers, it is all about the skills.