

THE SAN FRANCISCO PARALEGAL ASSOCIATION

BUSINESS AND PROFESSIONS CODE § 6450,
LEGAL MALPRACTICE CLAIMS, AND YOU:
A PRIMER FOR PARALEGALS

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I. What is a “Paralegal”?

- A. The Statute: Business and Professions Code § 6450
 - 1. Holds Her/Himself Out to be a Paralegal
 - 2. Qualified by Education, Training or Work Experience
 - 3. Contracts with or Employed by Attorney or Firm, Corporation or Governmental Agency or Other Entity
 - 4. Performs Substantial Work Under Direction or Supervision of an Active Member of California State Bar or Attorney Practicing in Federal Court

II. What Can a Paralegal Do?

- A. The Statute: Business and Professions Code § 6450
 - 1. Case Planning
 - 2. Case Development
 - 3. Case Management
 - 4. Legal Research
 - 5. Interviewing Clients
 - 6. Fact Gathering and Retrieving Information
 - 7. Drafting and Analyzing Legal Documents
 - 8. Collecting, Compiling, and Utilizing Technical Information to Make an Independent Decision and Recommendation to the Supervising Attorney
 - 9. Representing Clients Before a State or Federal Administrative Agency (if Permitted by Statute, Court Rule, or Administrative Rule or Regulation)
 - a) Non-lawyers can act as immigration consultants. See 8 CFR § 292 and California Business and Professions Code § 22440
 - b) Non-lawyers can act as bankruptcy petition preparers. 11 USC § 10—purely clerical
 - c) Paralegals can represent clients at California Workers’ Compensation Hearings (assuming client consent and attorney supervision). See California State Bar Formal Opinion 1988-103.
 - d) Paralegals can represent clients in Labor Board matters. See California Labor Code § 5501 and § 5700

- e) Paralegals may represent an individual in Unemployment Insurance Appeals Board matters. See California Unemployment Insurance Code § 1957

III. What Activities Are Prohibited

- A. The Statute: Business and Professions Code § 6450
 - 1. Providing legal advice
 - 2. Representing a client in court
 - 3. Selecting, explaining, drafting or recommending the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal
 - 4. Acting as a runner or a capper. See California Business and Professions Code § 6151 and § 6152. In other words, don't solicit business for your firm or employer at state prisons, county jails, city jails, city prisons, other places of detention, hospitals, sanitariums, courts, public institutions, public street or private property.
 - 5. Engaging in the unauthorized practice of law
 - 6. Contracting with any person other than a lawyer to perform legal services
 - 7. In connection with providing legal services, inducing a person to enter into a business transaction
 - 8. Establishing fees to be charged to a client for your services (you can negotiate your fees with your employer)

IV. Education Requirements

- A. The Statute: Business and Professions Code § 6450
 - 1. Certificate of completion of a paralegal program approved by the ABA
 - 2. Certificate of a paralegal program at or a degree from a postsecondary institution that requires at least 24 semester units in law related courses. The school must be accredited by an organization approved by the Bureau for Private Postsecondary and Vocational Education
 - 3. A baccalaureate degree or an advanced degree in any subject *plus* a minimum of one year of law-related practice under the supervision of an

attorney who has been licensed to practice for at least three years *plus* a declaration from that attorney

4. A high school diploma or GED *plus* a minimum of three years experience under the supervision of an attorney licensed to practice for at least three years *plus* a declaration from that attorney. *Caveat: to qualify under this section, you must have completed your training by December 31, 2003, otherwise, you must qualify under a different section.*
5. As of January 1, 2007, completion of four hours Mandatory Continuing Legal Education in ethics and 4 hours in general law every two years.
 - a) Attending a CLE program that qualifies for attorney CLE is the best way of ensuring compliance with the statute. Self study that complies with Business and Professions Code § 6070 is acceptable
 - b) Attorneys with whom you work are responsible for ensuring you meet CLE requirements; however you are responsible for keeping a record of the courses you have taken

B. Certification of MCLE—Common Questions

1. To whom do you certify education requirements?
 - a) No organization oversees certification.
 - b) Provide certification to the attorney/firm you work with
 - c) At a minimum, maintain a file with the important documents relating to your certification
2. What if I obtained my education/certification out of state?
 - a) If you are coming to California from another state to work on a short-term project, you do not need to certify so long as you are being supervised by a California attorney
 - b) If you obtained certification out of California, but your program was ABA-approved, you are okay.
 - c) If you completed a paralegal program at a post-secondary institution that is unaccredited, technically, you are not in compliance, and you should re-certify

- d) Unfortunately, even if you worked as a paralegal in another state under the supervision of an attorney in that state, you will not qualify as a California paralegal under Business and Professions Code § 6450(c)(3) or (4). You should re-certify
- 3. Ramifications of Failure to Meet Education Requirements
 - a) Technically, you are in violation of the code
 - b) Attorneys' fees and costs could be reduced. See *White v. GMRJ, Inc.*, (2006), ED Cal) 2006 US District LEXIS 2059
- 4. You've taken a long break from working as a paralegal and your MCLE is not current
 - a) This is untested. Best advice: analogize to lawyer MCLE. If a lawyer is an active member of the bar, even if they are on a leave of absence from work, he or she is required to fulfill MCLE requirements. If a lawyer is voluntarily inactive for a period of time and then becomes active, the lawyer is required to fulfill a proportionate share of MCLE for the compliance period.
 - b) Rule of thumb: If you are on a leave for a shorter period of time (months), meet your MCLE requirements; If you are on a long leave from working as a paralegal (years) start your MCLE upon return to work in the field and keep current for every two year period following your return to work.

V. Duties Owed by Paralegals

- A. Duty of Confidentiality, See Business and Professions Code § 6453 and § 6068(e)(1).

You must maintain inviolate the confidentiality and attorney client privilege for a “consumer” for whom the paralegal has provided services.

VI. Liability for Violation of Business and Professions Code § 6451

It is unlawful to provide services for a consumer other than those authorized by Business and Professions Code § 6450 et seq.

- A. Criminal Liability—Business and Professions Code § 6455(b)

1. Any violation of Business and Professions Code § 6451 that injures a consumer
 2. First violation is an infraction and can result in a fine up to \$2,500
 3. Second violation is a misdemeanor and can result in a fine up to \$2,500 plus no more than one year in jail
 4. Restitution
- B. Civil Liability—Business and Professions Code § 6455(a)
1. Any consumer injured by a violation of Business and Professions Code § 6450 can sue you for injunctive relief, restitution and damages
- C. Attorney Liability for Paralegal Misconduct/Error
1. Business and Professions Code § 6452(b)—An attorney who uses the services of a paralegal is liable for any harm caused as a result of the paralegal's negligence, misconduct, or violation of Business and Professions Code sections pertaining to paralegals
 2. Respondeat Superior—Even if there were no such statute, the legal doctrine of respondeat superior renders the attorney/firm you work for is responsible for your negligence
 3. Discipline for Attorney—Grounds for discipline where an attorney fails to supervise a paralegal or somehow fosters the any of the activity prohibited by the statute.
 4. Question re liability for intentional tort—Although the statute is quite broad, public policy concerns will probably shield an attorney's liability for his or her paralegal's intentional acts.

VII. Some Common Areas of Legal Malpractice and How to Help the Attorneys with Whom You Work Avoid Them

A. Client Intake/Retention

1. Fee Agreements—Generally, unless the retention will result in less than \$1,000 in fees, a written fee agreement is necessary. There are specific requirements for contingency fee agreements—Business and Professions Code § 6147. Hourly agreements governed by Business and Professions Code § 6148.
 - a) You can prepare these with supervision and input of attorney
 - b) Best practice to have attorney explain the terms of the agreement to the prospective client
 - c) Best practice to assist attorney—institute policy to ensure each file has a written fee agreement
2. Declining a Potential Client’s Case—What to do when your office is *not* taking a potential client’s case but a statute of limitations or other important deadline is approaching? An attorney has a duty to advise of need for prompt action where statute of limitations is impending. See *Miller v. Metzinger* (1979) 91 Cal.App.3d 31.
 - a) Best practice is to be general, rather than specific, to avoid miscalculation of a deadline
3. Identify the client—Sometimes this is challenging. Is the client a corporation, trust, trustee, partnership? To whom are duties owed?
4. Conflict Checking—Screen potential clients for conflicts. See RPC 3-310
 - a) Ensure you have the full and complete names of all parties involved in the potential representation. A conflict checking system is only as good as the information entered into it.
 - b) Is a conflict waiver necessary? If so, what is your role in obtaining the waiver?
 - (1) Two or more clients whose interests may potentially conflict

- (2) Two or more clients whose interests actually conflict—This can happen while a case is ongoing!
- (3) Representation adverse to a client or former client where the attorney has confidential communications from the client or former client relevant to the representation of the new client RPC 3-310(E)

B. Conflicts You Can Help Avoid — The Problems Created by Moving to a New Firm/Office

Caveat - RPC 3-310(E) presents a real problem when you move to a new firm or office. You may leave a firm, but the confidential information you obtained while working on cases at your old firm will follow you and may result in the disqualification of your new firm or office!

1. If at all possible, avoid moving to a firm that represents litigation adversaries of your present firm's clients.
2. If you do attempt to move to such a firm, bring with you a complete list of all cases on which you have worked so that the potential new firm can perform a conflict check. Ethical screening is sometimes possible

C. Client Communications—RPC 3-500 provides that an attorney shall “keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

1. You will often be the source of such communications, either by forwarding documents or by responding directly for requests for information.
2. If you are unsure whether you are providing legal advice in your communications with clients, or if you feel that you are being pressed by the client to do so, set your boundaries and refer the client to the attorney.

D. Case Management

1. Time-keeping—If the representation is governed by an hourly fee agreement, time-keeping is required. Keep accurate records and wherever possible, be descriptive. This will keep the client informed and minimize

the risk of disputes relating to the amount of time you've worked on a case.

2. Calendaring—Missed deadlines are a frequent source of legal malpractice claims. Such claims are difficult to defend, without trying the lost the claim. Avoiding calendaring errors is the best defense.
 - a) Your calendaring system is only as good as the information entered
 - b) Are you calendaring tolling agreements?
 - c) Best practice is to have a double-calendar system: a computer calendar and a paper calendar

E. Document Management

1. Original Client Documents—Wills, settlement agreements, original documents for litigation. Handle all of these with extreme care! Best practice is to make a copy for the office/attorney files and return original client documents to client
2. E-discovery—FRCP now calls for production of significant volume of electronic data. These rules call for imposition of “litigation holds” so that clients do not unwittingly destroy relevant electronic information. Make yourself familiar with the rules and the case law relating to e-discovery. See FRCP 16, 26 and 34 and *Zubulake v. UBS Warburg*, 217 FRD 209 (S.D.N.Y. 2003); *Zubulake II* 2003 U.S. Dist. LEXIS 7940 (S.D.N.Y. May 13, 2003); *Zubulake III*, 216 F.R.D. 280 (S.D.N.Y. 2003); *Zubulake IV*, 220 F.R.D. 212 (S.D.N.Y. 2003; *Zubulake V*, 2004 U.S. Dist. LEXIS 13574 (S.D.N.Y. July 20, 2004)

F. Invasion of Privacy—Exercise discretion when handling sensitive information relating to your client's litigation adversary. Failure to do so could result in a claim for invasion of privacy!

G. After a Legal Malpractice Claim Is Made: Paralegal as Witness

1. Resist the urge to discuss the claim with other people involved in the underlying case outside the presence of counsel
2. Do not discuss with friends or family, and if you must, do so in the most general way

3. Does your firm have in-house counsel? If you must communicate about the case prior to the assignment of outside counsel, best practice is to do so in conference with in-house counsel
4. Gather your emails and other electronic data you may have on any computer or other electronic device

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*** This DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CII. 16 OF THE 2008 REGULAR SESSION APPROVED 5/16/08
BUSINESS and PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 5.6. Paralegals
GO TO CALIFORNIA CODES ARCHIVE DIRECTORY
Cal Bus and Prof Code § 6450(2007)

§ 6450. "Paralegal"; Requirements

(a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(F) This section shall become operative on January 1, 2004.

HISTORY:

Added Stats 2000 ch 439 § I (AB 1761). Amended Stats 2001 ch 311 § 2 (AB 1083); Stats 2002 ch 664 § 15 (AB 3034), § 16 (AB 3034), operative January 1, 2004; Stats 2006 ch 567 § I (AB 2303), effective January 1, 2007.

NOTES:

Former Sections:

Former § 6450, similar to the present section, was added Stats 2000 ch 439 § 1, amended Stats 2001 ch 311 § 1, Stats 2002 ch 664 § 15, and repealed, operative January 1, 2004, by its own terms.

Amendments:

2001 Amendment:

(1) Added "holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, and who" in the first sentence of subd (a); and (2) substituted "subdivision (a)" for "subdivisions (a) and (b)" in subd (e).

2002 Amendment:

Deleted "and" after "or work experience," in the first sentence of subd (a).

2006 Amendment

(1) Amended the first sentence of subd (d) by (a) substituting "Every two years, commencing January 1, 2007, any person that is working as a paralegal" for "All paralegals" at the beginning; (b) deleting "every three years" after "to certify completion"; and (c) adding "and four hours of mandatory continuing legal education in either general law or in an area of specialized law"; and (2) deleted the former third sentence of subd (d) which read: "Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law."

Law Review Articles:

Symposia: Financial Abuse of the Elderly in California. 36 Loyola U of LA LR 667.

Practice Tips: Laws Affecting the Employment of Paralegals. 29 LA Law 16 (February, 2007).

Hierarchy Notes:

Div. 3, Ch. 5.6 Note

NOTES OF DECISIONS 1. Generally

1, Generally

Motion for an award of attorneys' fees and costs under 42 U.S.C.S. § 12205 was granted for a reduced amount where a number of individual's specific requests were denied, including disallowance of treatment of a paralegal as

a legal assistant whose fees were not separately reimbursable since the individual failed to properly document her qualifications under B and P C § 6450(c) (4) . *White v. GMRJ, Inc.* (2006, ED Cal) 2006 US Dist LEXIS 2059.

Where plaintiff sued a restaurant under the Americans with Disabilities Act, 42 U.S.C.S. § 512101-12300, and state law, her Fed. R. Civ. P. 59(e) motion for reconsideration of the denial of fees for a paralegal was properly denied, where

the paralegal failed to provide a written declaration in accordance with B and PC § 6450(c) (4) *White v. GMRI. Inc.* (2006, ED Cal) 2006 US Dist LEXIS 22200.

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2007-2008 THIRD EXTRA. SESSION CH. 1 AND CH. 28 OF THE 2008 REGULAR
SESSION APPROVED 6/6/08, AND PROPOSITION 99 APPROVED BY VOTERS 6/3/08
BUSINESS and PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 4. Attorneys
Article 9. Unlawful Solicitation
GO TO CALIFORNIA CODES ARCHIVE DIRECTORY
Cal Bus and Prof Code § 6151 (2007)

§ 6151. “Runner,” “capper,” and “agent” defined

As used in this article:

(a) A runner or capper is any person, firm, association or corporation acting for consideration in any manner or in any capacity as an agent for an attorney at law or law firm, whether the attorney or any member of the law firm is admitted in California or any other jurisdiction, in the solicitation or procurement of business for the attorney at law or law firm as provided in this article.

(b) An agent is one who represents another in dealings with one or more third persons.

HISTORY:

Added Stats 1939 ch 34 § 1. Amended Stats 1963 ch 206 § 1; Stats 1991 ch 116 § 6 (SB 1218).

NOTES:

Amendments:

1963 Amendment:

Substituted “, whether the attorney is admitted in California or any other jurisdiction,” for “within this State” in subd (a).

1991 Amendment:

Amended subd (a) by (1) adding “for consideration” after “corporation acting”; (2) substituting “or law firm, whether the attorney or any member of the law firm” for “, whether the attorney”; and (3) substituting “the attorney at law or law firm” for “such attorney at law” after “of business for.”

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2007-2008 THIRD EXTRA. SESSION CH. 7 AND CII. 28 OF THE 2008 REGULAR
SESSION APPROVED 6/6/08, AND PROPOSITION 99 APPROVED BY VOTERS 6/3/08
BUSINESS and PROFESSIONS CODE
Division 3. Professions and Vocations Generally
Chapter 4. Attorneys
Article 9. Unlawful Solicitation
GO TO CALIFORNIA CODES ARCHIVE DIRECTORY
Cal Bus and Prof Code § 6152(2007)

§ 6152. Unlawful acts as runner or capper; Presumption of fraudulent execution in obtaining relief from liability claim; Recommendation of professional employment; Public defender or assigned counsel

(a) It is unlawful for:

(1) Any person, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any attorneys or to solicit any business for any attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to the claim and primarily for treatment of the injury, is presumed fraudulent if the release is executed within 15 days after the commencement of confinement or prior to release from confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether those persons are in custody or otherwise.

HISTORY:

Added Stats 1939 ch 34 § I. Amended Stats 1963 ch 206 § 2; Stats 1976 ch 1016 § 1; Stats 1977 ch 799 § 1, effective September 14, 1977; Stats 1998 ch 931 § 2 (SB 2139), effective September 28, 1998; Stats 2002 ch 784 § 2 (SB 1316).

NOTES:

Amendments:

California Legislature
Marilyn C. Brewer
Assemblywoman, Seventieth District
Representing the cities of Costa Mesa, Irvine, Laguna Beach, Newport Beach, and portions of Laguna Hills, Lake Forest, Santa Ana, Aliso Viejo and Tustin.

MEMORANDUM

Date: November 2, 2000
To: The Archived Record of AB 1761
From: Assemblywoman Marilyn Brewer
Regarding: The Most Frequently Asked Questions Regarding AB 1761

On September 13, 2000, Governor Gray Davis signed AB 1761; a bill which defines the term paralegal/legal assistant as an individual who works under the supervision of an attorney who must meet certain educational criteria and must complete continuing education. The intent of this bill is to differentiate those who work under the supervision of an attorney and those who provide services directly to the public. For those who work under the supervision of an attorney, the only intended change to the profession is a higher standard of education and mandatory continuing education to utilize the title of paralegal. The duties of those who work under the supervision of an attorney have not changed and the bill codifies existing case law.

The following is a list of the most frequently asked questions since the codification of the bill by Governor Davis.

Registration:

1. *Who do I have to be registered with to call myself a paralegal?*

AB 1761 does not require paralegals to be registered. Only Legal Document Assistants (LDAs) are required to register. LDAs are those who work directly for the public and type legal documents and are governed by Business and Professions Code Chapter 5.5.

2. *Who is the governing body?*

AB 1761 does not create a governing body for the paralegal profession. However, the bill does create a new crime, and therefore, will be enforced by the courts and the consumer who brings a cause of action against an individual who violated this law. In essence, it is the consumer who will enforce the provisions of AB 1761.

Education:

1. *What if I do not possess a paralegal certificate but I have worked for attorneys for over 10 years? Can I call myself a paralegal? Will I be grandfathered in?*

The new Business and Professions Code § 6450(c)(4) specifically grandfathers in paralegals who have been trained by and have been working for an attorney for at least three years by January 1, 2004. A signed declaration by the paralegal's supervising attorney is required

under the code. This declaration should be kept with the paralegal and the paralegal's supervising attorney.

2. *To whom should I certify that I have met the initial education requirements of Business and Professions Code § 6450?*

AB 1761 does not expressly require a paralegal to certify their education with anyone or a state entity. However, it does require paralegals to keep a record of their certifications. Practical application of the law dictates that a paralegal would have to certify their education with the supervising attorney since he/she is held liable by the paralegal's actions. In addition, paralegals should be prepared to certify their qualifications to clients, in case the question ever arises.

3. *What if my school was not ABA-approved before I graduated? Is my paralegal certificate invalid?*

Your paralegal certificate is valid under Business and Professions Code § 6450(c)(1)(2), as long as it meets the following criteria:

(1) A certificate of completion of a paralegal program approved by the American Bar Association;

(2) A certificate of completion of a paralegal program at, or a degree from a post-secondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national regional accrediting organization or approved by the Bureau for Private Post-secondary and Vocational Education.

4. *What if I come from another state to work in California? Can I qualify under the code?*

There would be no problem with a paralegal coming from another state to work in California as long as the educational requirements are met.

5. *What if work for a national law firm in another state other than California, can my firm send me to California to work on specific cases with them? Will I have to certify continuing education?*

It would be acceptable if the paralegal is temporarily working on a case for its law firm which is located out of California. For example, if the firm is in both California and Arizona, and the California firm has a need for additional help on a specified case, the firm may send an Arizona paralegal to work on the case, as long as the paralegal is working for a California Attorney who is a member of the State Bar of California and that paralegal qualifies as a paralegal from the state in which they came. It would be acceptable for a law firm to send an

“out of state” paralegal to work on specific cases. Continuing education for those working in California temporarily is recommended but is not mandatory.

Continuing Education:

1. *What happens if the continuing education criteria are not met?*

If the educational criteria are not met by the paralegal, the individual is in violation of the Code.

2. *To whom does the paralegal certify his or her continuing education?*

AB 1761 requires the paralegal to certify his or her continuing education with his or her supervising attorney. There is no state or local agency or association who will monitor the requirements. Paralegals should keep a record of their certifications.

3. *Who will monitor paralegals to ensure these qualifications are met? What governing body will enforce the code?*

No governing body has been created to monitor the continuing education of paralegals. Again, it was not the intent of the author to create a governing body for the paralegal profession. However, the bill does create a new crime; and therefore, will be enforced by the courts and the consumer who brings a cause of action against an individual who violated the provisions of Business and Professions Code § 6450.

4. *What if I am a certified Legal Assistant (CLA) with the National Association of Legal Assistants, or a Registered Paralegal (RP) with the National Federation of Paralegal Associations? Can I use those credits for my continuing education?*

The National Association of Legal Assistants has a voluntary certification test (Certified Legal Assistant or CLA) which requires continuing education to keep the credential. The National Federation of Paralegal Associations also has a voluntary test (PACE) which also requires continuing education. California paralegals must now maintain continuing education requirements which are approved by the State Bar of California (MCLE credits). Historically, both the National Association of Legal Assistants and the National Federation of Paralegal Associations have honored MCLA credits. However, it is still ultimately the decision of either association as to what courses will be accepted.

5. *Can I utilize self-study programs if they are MCLE approved by the State Bar of California?*

Yes. As long as the courses meet the requirements of Business and Professions Code § 6070.

6. *What if I write a legal article or teach a legal course? Will it meet the criteria as continuing education?*

No. The Code is specific in regards to its continuing educational criteria.

School Criteria:

1. *What if my school became ABA approved after I graduated? Can I still call myself a paralegal?*

Yes, as long as the educational criteria are met. If the educational criteria are not met, then you will need to qualify under Section (c)(2)(3) or (4).

2. *What if I come from out of state?*

In order to become a paralegal in California, those coming from out of state must meet the qualifications of California paralegals, unless they are working with their law firm on a temporary or loan basis.

3. *If someone graduates from a non-ABA accredited school, but the program has 21 units, can that student return to school for the 3 additional units to meet the requirement?*

Yes. The school should then reissue a new certificate to those who have completed the 3 additional units.

4. *What if someone is in the process of meeting the training requirements but is not totally completed with the training by 2003, as required by AB 1761? For instance, the person has 2 years and ten months of training, can they call themselves paralegals?*

No. The requirements are clear.

Duties:

1. *Have the duties a paralegal performed prior to the enactment of the bill changed?*

No. The duties a paralegal performs under the supervision of an attorney have not changed, nor has the level of supervision.

2. *What are the duties a paralegal may perform?*

A paralegal may still perform the tasks, including but not limited to, case planning, development and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney.

Prohibited Activities:

1. *What are the prohibited activities of a paralegal?*

A paralegal is governed by the same Code of Ethics and Canons of their supervising attorney. The following restrictions have been specifically laid out in the Code:

(b) Notwithstanding subdivision (a), a paralegal shall not do any of the following:

(1) Provide legal advice;

(2) Represent a client in court;

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal;

(4) Act as a runner or capper as defined in Sections 6151 and 6152;

(5) Engage in conduct that constitutes the unlawful practice of law;

(6) Contract with, or be employed by, a natural person other than an attorney to perform legal services;

(7) In connection with providing paralegal services, induce a person to make an investment, purchase financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived;

(8) Establish fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegals' work. (This does not apply to fees charged by paralegals in a contract to provide legal services to an attorney, law firm, corporation, governmental agency, etc.)

2. *Are the prohibitions any different than they were prior to the enactment of Business and Professions Code § 6450?*

No. These activities were prohibited prior to the enactment of AB 1761.

Dual Duties—LDA and Paralegal:

1. *What if I work as a Legal Document Assistant (as defined in Business and Professions Code § 6408) and I also contract with attorneys? Can I advertise as a paralegal?*

A person can only advertise as a paralegal to prospective contracting attorneys. Paralegals do not work directly for members of the public. Under A13 1761, a paralegal does not have clients- his or her supervising attorney does. To advertise as a paralegal directly to members of the public would be confusing to public and in violation of the Code. In other words, to advertise paralegal services to a prospective client for whom the individual can only type legal forms is misleading and illegal.

An individual can still contract with attorneys and can also perform work as a Legal Document Assistant. When performing paralegal tasks, the individual must meet the criteria of Business and Professions Code § 6450. When working directly for the public, the Legal Document Assistant must be registered with the County Clerk/Recorder's office and post a \$25,000 bond. An individual who does both, has two different professions, therefore must

qualify under both statutes, and keep them separate.

2. *Do I have to have two sets of business cards and, if so, what should they say?*

As described above, a person can be both a paralegal and a Legal Document Assistant; however, to avoid running afoul of either statute, certain precautions should be taken. Namely, a dual duty professional should have two sets of business cards and letterhead for each activity.

The business card for Legal Document Assistants must include their registration number and a statement that they do not work for attorneys. A business card for a paralegal shall include the name of the law firm where that individual is employed and clarification that the person is not an attorney or a statement that he or she is employed by contracting with a California licensed attorney.

Penalties for Violations:

1. *What are the penalties for not abiding by Business and Professions Code § 6450?*

AB 1761 provides for both criminal and civil causes of action for violation of the law.

Specifically, any consumer who is injured by a violation of this Code may file a complaint and seek redress in any municipal or superior court for injunction relief, restitution, and damages.

Any person who violates this act is guilty of an infraction for the first offense which is punishable upon conviction, for a fine up to \$2,500 as to each consumer a violation occurs and a misdemeanor for the second and each subsequent violation which is punishable upon conviction of a fine of up to \$2,500 as to each consumer with respect to each violation, or imprisonment in a county jail for not more than one year, or both with respect to each violation that occurs.

Requirements of Attorneys:

1. *As an attorney, do I have to keep a record of my paralegals?*

The law does not require you to, but given that the supervising attorney is liable for the actions of the paralegal, it is in your best interest to do so.

2. *Should I check with my malpractice carrier to see if I should increase my malpractice insurance?*

No. The paralegal, as defined under AB 1761, is still governed by the same Code of Ethics and same Canons as the supervising attorney. It is not the intent of the author to change the duties of the paralegal, but to elevate the profession with the recognition it so well deserves.