

President's Message

By: Carolyn Yellis, CLA

This issue of *RECAP* is particularly significant because California paralegals are in the limelight. Throughout the last few years, your CAPA representatives have circulated CAPA's paralegal definition to their local Boards of Directors. Each association then brought back its comments and suggested amendments to the proposed definition. The proposed definition was then revised in line with the local associations' suggested amendments, and the representatives took the amended proposal back to their local boards. As CAPA has 13 member associations, it took a while to come to a consensus on the language for the proposed definition. In June 1999, a motion was overwhelmingly carried by CAPA's Board of Directors and the proposed definition was approved.

It was decided that CAPA's legislative committee would pursue the approved definition through the legislature. CAPA's legislative committee went to work. Stacey Hunt, CLA, CAS (currently CAPA's Vice President of Policy); Hazel Lange (past CAPA President and Board Advisor Emeritus,) and I, visited the office of Assemblywoman Marilyn Brewer (R - Newport Beach.) Ms. Brewer reviewed CAPA's definition and agreed to author a legislative bill.

Assemblyman Rod Pacheco (R - Riverside) and California State Senator Jackie Speier (D - San Mateo) signed onto the bill as co-authors. On January 18, 2000, CAPA's approved definition was introduced to the California legislature and became Assembly Bill ("AB") 1761- a Consumer Protection bill.

The purpose of this bill is to 1)

firmly establish the paralegal profession as one which works with and enhances the delivery of legal services by attorneys, 2) differentiates such traditional paralegals from those who inappropriately use the title to provide legal and typing services directly to the public; and, 3) distinguish those who are otherwise authorized to provide legal services to the public as are defined by statutory, administrative, or court authority.

It is clear that this is a California issue that will effect California paralegals. A "one size fits all" scheme of making all states the same will not work for California. It is important to realize that there are currently at least 35 states that have defined the title "paralegal/legal assistant" as *a person who works under the supervision of an attorney. California does not yet have a definition in place for those paralegals/legal assistants who work under the supervision of an attorney.* California is unique in that California is the *only* state that has set educational standards and guidelines for those who deliver their legal services directly to the public. On September 30, 1998, Governor Wilson signed Senate Bill ("SB") 1418 into law, and added it to the *Business and Professions Code* as Section 6408. Section 6408 defines the role and educational qualifications of a "Legal Document Assistant" (LDA.) LDAs are also required to register with the County Recorder's Office of the county in which they work, as well as post a \$25,000 bond. Section 6408 describes the difference between those who deliver legal services directly to the public and those who work under the supervision of an attorney.

Several questions and concerns have arisen from some of the individuals who deliver services directly to the public.

Below is a list of some of those concerns regarding AB 1761:

Concern: AB 1761 will put “independent paralegals” out of business, thereby denying the public access to low-cost legal services.

Reply: AB 1761 will not put these professionals out of business. It will, however, prohibit the use of the title “paralegal” by individuals who provide legal services independent of an attorney. Current law (*Business and Professions Code* Section 6408,) which was enacted by SB 1418 (Rosenthal, Chapter 1079, 1998,) created a title for individuals who provide self-help legal service to the public. That title is Legal Document Assistant. Paralegals are exempt from registration under *Business and Professions Code* Section 6408.

AB 1761 does not change existing statutes that govern LDAs found in *Business and Professions Code* Chapter 5.5. The definition of a paralegal under AB 1761 is in clear contrast to the definition of an LDA. A paralegal is one who works under the supervision of an attorney and shall not provide legal services to any consumer who is not a client of a supervising attorney. Since *Business and Professions Code* Section

6408 defines LDAs as persons who provide “self-help services” directly to members of the public, paralegals could not legally compete for the same clients.

AB 1761 defines a profession that is entirely different from that of a legal document assistant. Under Chapter 5.5 of the *Business and Professions Code*, LDAs may assist a person representing himself in a legal matter by completing legal documents in a *ministerial* manner, providing general published factual information that has been written or approved by an attorney pertaining to legal procedures, rights, or obligations and filing and serving legal forms and documents.

The tasks performed by a paralegal are those traditionally performed by an attorney and include, but are not limited to, case planning, development, and management; legal research; and collecting, compiling, and utilizing technical information to make an independent decision and recommendation to an attorney.

Concern: The LDA statute is set to sunset. What title will LDAs use then?

Reply: Chapter 5.5 of the *Business and Professions Code* is set

to sunset December 31, 2002. It is believed that legislation to repeal the sunset will be introduced during the next legislative session.

Concern: AB 1761 makes it a crime to display one's certificate of completion of a paralegal course unless she or he is working under the supervision of an attorney.

Reply: This is false. Displaying a certificate is not advertising and is not a crime under AB 1761.

Concern: AB 1761 will confuse consumers who look for legal services under "paralegal" in the telephone book.

Reply: As it is with most services that advertise in the yellow pages, cross-references can be utilized to point the inquiry to another section. For example, if a person is looking for a "paralegal" in the yellow pages, that section could state "See Legal Document Assistant" or "See Legal Services."

AB 1761 was introduced to protect the public and establish a definition for those who work under the supervision of an attorney.