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COMMITTEES
APPROPRIATIONS
HUMAN SERVICES

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 & 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 & Professions Code Section 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 & 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 & Professions Code Section 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 I 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 & 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 & 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 Cannons 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 & 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 & 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 AB 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 & 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 injunctive 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.