

## President's Message

By Teresa Grooms

In keeping with my last "President's Message", I searched the NFPA website for more information regarding regulation of paralegals in other states. Below is a new law that was proposed in April of this year, but not passed in New Hampshire regarding court appearances of paralegals. While this is not what I would normally call "regulation", it does affect the paralegal profession and gives additional responsibilities to qualified paralegals. NFPA wrote a letter to the New Hampshire Senate making the recommendation that they remove the term "legal assistant" and only use the term "paralegal." It doesn't appear that the Senate made those amendments before submitting the bill to the House where it was deemed "Inexpedient to Legislate". The comments from the House follow the Senate bill.

New Hampshire SB 83:

**SB 83 - Court appearances of paralegals.** Adds language to RSA 311.7 regarding appearances in court by attorneys to specifically allow paralegals to appear in court "under the direct supervision" of a NH attorney. If passed, the legislation would reword the statute to read as follows (new language in **bold**):

"311:7 Prohibition. No person shall be admitted commonly to practice as an attorney in court unless **the person** [replaces "he"] has been admitted by the court and taken the oath prescribed in RSA 311:6. **Paralegals or legal assistants appearing under the direct supervision of an attorney admitted to practice in New Hampshire shall not be deemed to be commonly practicing as an attorney in court, provided that:**

**(a) An attorney responsible for the direct supervision of such paralegal or legal assistant shall comply with the rules of professional conduct adopted by the supreme court relating to paralegals and legal assistants and shall be familiar with the facts and legal issues with respect to any proceeding at which a paralegal or legal assistant may appear without the supervising attorney's presence.**

**(b) If a paralegal or legal assistant is appearing in court or in an administrative hearing without the presence of the supervising attorney, the attorney shall, by sworn statement, verify that the attorney is familiar with the facts of the matter and that, in the attorney's professional judgment, the paralegal or legal assistant is qualified to appear without the supervising attorney's presence. The attorney shall be liable for the acts of the paralegal or legal assistant performed in court without the supervising attorney's presence.**

**(c) A paralegal or legal assistant shall not be permitted to appear under the provisions of this section in a criminal matter or a civil commitment."**

The Bar's Board of Governors did not vote to take a position for or against the bill, but it authorized its legislative representative, attorney John MacIntosh, to discuss with the Legislature a number of questions and concerns the bill raises, including the lack of a meaningful definition of "paralegal" or "legal assistant" and whether it is appropriate for the Legislature to make rules in this area. Following public hearings, the Senate Judiciary Committee did elaborate on the introduced version of the bill, adding language to emphasize that the supervising attorney must be familiar with the matters being handled in court by the paralegal and underlining that the attorney would be liable for the actions of the paralegal in court.

May 29, 2003 House Journal notes:

**SB 83**, relative to paralegals and legal assistants. **INEXPEDIENT TO LEGISLATE**  
Rep. James W. Craig for Judiciary: This bill would allow a "paralegal or legal assistant" to practice in courts and administrative hearings either under the direct supervision of an attorney who appears with the paralegal or alone, providing that the supervising attorney provides an affidavit verifying that the person is qualified to appear without the attorney. The paralegal could appear in any case other than a criminal matter or a civil commitment. While many on the committee felt that the intention of the bill is good, the majority felt that the bill needs much revision, which should be done by the bill's proponents to be resubmitted in a future session. For example, there are no statutory definitions of a "paralegal" or a "legal assistant." Further, there are no statutory requirements to become a paralegal and court rules (Rule 35) declare a legal assistant as anyone who works in a lawyer's office. Vote 9-4.

Adopted.

#### **PROTEST**

Pursuant to Part 2, Article 24 of the New Hampshire Constitution, Rep. Soltani requested that his protest be entered on the Journal.

This bill was an attempt to break the stranglehold of the New Hampshire Bar Association on the New Hampshire courts and judicial system. Its defeat by the House is yet another blow to the people of the state and preserves the monopoly currently granted to the Bar. Access to the courts would have been granted to the ordinary citizen under this bill and it should have been passed.

*Source: [www.nhbar.org](http://www.nhbar.org) and [www.gencourt.state.nh.us](http://www.gencourt.state.nh.us)*