

KEYSTONE ALLIANCE OF PARALEGAL ASSOCIATIONS

Position Statement on the
Unauthorized Practice of
Law (UPL) in the
Commonwealth of
Pennsylvania

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PREAMBLE

Keystone Alliance of Paralegal Associations

The Keystone Alliance of Paralegal Associations (“Keystone Alliance”) is a non-partisan, non-profit professional organization, formalized in 1995, from groundwork laid in the 1980’s by the paralegal associations in Pennsylvania. Representatives of member associations meet throughout the year to exchange information, discuss issues affecting the paralegal profession and to work on promoting the paralegal profession. The member associations represent in excess of 1700 paralegals in the Commonwealth of Pennsylvania. Member associations include:

Central Pennsylvania Paralegal Association (CPPA)
Chester County Paralegal Association (CCPA)
Lancaster County Paralegal Association (LAPA)
Lycoming County Paralegal Association (LCPA)
Montgomery County Paralegal Association (MCPA)
Philadelphia Association of Paralegals (PAP)
Pittsburgh Paralegal Association (PPA)
York County Paralegal Association (YCPA)

Any paralegal association located in and/or representing paralegals in the Commonwealth of Pennsylvania is eligible to become a member of the Keystone Alliance.

The purposes of the Keystone Alliance are:

1. To provide a statewide voice for paralegals in Pennsylvania;
2. To maintain a statewide communications network among paralegal associations.
and other members of the legal community;
3. To advance, foster and promote the paralegal profession in Pennsylvania;
and
4. To monitor developments in the paralegal profession.

Definition

The Keystone Alliance defines a paralegal as a “person who is qualified through education, training or work experience to perform substantive legal work requiring knowledge of legal concepts and ethics and is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity to work under the direction of a lawyer or pursuant to state statute, administrative regulation or court authority in a capacity that, in most instances, would be performed by a lawyer in the absence of a paralegal.”

POSITION STATEMENT

The Keystone Alliance of Paralegal Associations (“Keystone Alliance”) and its member associations are very concerned with the issues of the unauthorized practice of law (UPL) activity in the Commonwealth of Pennsylvania. The unauthorized practice of law damages the legal profession and the public it serves. Misuse of the title “paralegal” confuses the public and negatively affects the paralegal profession as well as the entire legal profession. ***The Keystone Alliance does not support paralegals or other non-lawyers who participate in the unauthorized practice of law.***

In response to the increase in unauthorized practiced of law in the Commonwealth of Pennsylvania, the Keystone Alliance has chosen to take a pro-active position on this issue by:

- Developing and expanding working relationships with local bar associations and the Pennsylvania Bar Association (PBA) and other law related entities against UPL.
- Increasing efforts to educate:
 - the public on the limitations of non-lawyer services;
 - attorneys on paralegal utilization;
 - paralegals and other non-lawyers on ethical boundaries of non-lawyers; and
 - the practice of law.
- Acting as an information resource on the paralegal profession.
- Establishing a benchmark standard for qualified paralegals.

UNAUTHORIZED PRACTICE OF LAW (UPL)
&
THE COMMONWEALTH OF PENNSYLVANIA

42 Pa.C.S. §2542 directly addresses UPL and paralegals. It states:

Except as provided in subsection (b), any person including, but not limited to, a paralegal or legal assistant, who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction, without being any attorney at law or a corporation complying with 15 Pa.C.S. Ch. 29 (relating to professional corporations), commits a misdemeanor of the third degree upon a first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree.

In the Pennsylvania Rules of Civil Procedure under the Rules of Professional Conduct Rule 5.3 states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Additionally, Rule 5.4(5)(b) states "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."

PROFESSIONAL ETHICS AND UPL

Paralegals in Pennsylvania are not directly bound by the Rules of Professional conduct in the Pennsylvania Rules of Civil Procedure, however, similar principles are recited in the codes of national paralegal associations:

National Association of Legal Assistants (NALA)
Code of Ethics and Professional Responsibility:

Canon 3 - A paralegal must not: (a) engage in, encourage, or contribute to any act which could constitute the unauthorized practice of law; and (b) establish attorney-client relationships, set fees, give legal opinions or advice or represent a client before a court or agency unless so authorized by that court or agency; and (c) engage in conduct or take any

action which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.

Canon 4 - A paralegal must use the discretion and professional judgment commensurate with knowledge and experience but must not render independent legal judgment in place of an attorney. The services of an attorney are essential in the public interest whenever such legal judgment is required.

National Federation of Paralegal Associations (NFPA)

Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement:

1.8 - A paralegal shall not engage in the unauthorized practice of law.

EC-1.8(a) - A paralegal shall comply with the applicable legal authority governing the unauthorized practice of law in the jurisdiction in which the paralegal practices.

The Keystone Alliance also states and supports a similar position:

Keystone Alliance

Paralegals and The Delivery of Legal Services pamphlet:

What Tasks are Paralegals Prohibited from Performing?

1. A paralegal cannot set legal fees;
2. A paralegal cannot contract to provide legal services to the public;
3. A paralegal cannot represent a client in court unless permitted pursuant to state statute, administrative regulation or court authority
4. A paralegal cannot render legal opinions;
5. A paralegal shall not engage in the unauthorized practice of law and shall not encourage or contribute to any act which could constitute the unauthorized practice of law.

Additionally, the Keystone Alliance has adopted Minimum Standards and Professional Responsibility Guidelines for Paralegals in the Commonwealth of Pennsylvania. Guidelines which specifically address professional ethics and unlawful practice of law regarding paralegals are as follows:

GUIDELINE I

A paralegal shall not engage in the unauthorized practice of law and shall not encourage or contribute to any act which would constitute the unauthorized practice of law.

GUIDELINE II

A paralegal shall not represent a client before any court or administrative agency unless expressly permitted by statute or administrative regulation.

GUIDELINE III

A paralegal may perform services under the direction of a lawyer or pursuant to state statute, administrative regulation, or court authority.

GUIDELINE IV

A paralegal shall fully disclose his/her professional status.

GUIDELINE VII

A paralegal shall not share legal fees with a lawyer or law firm.

GUIDELINE VIII

A paralegal shall not form a partnership with a lawyer if any of the activities of the partnership consist of the practice of law.

ACTIONS TO BE TAKEN AGAINST THE UNAUTHORIZED PRACTICE OF LAW IN THE COMMONWEALTH OF PENNSYLVANIA

**DEVELOP AND EXPAND WORKING RELATIONSHIPS
WITH LOCAL BAR ASSOCIATIONS, THE PENNSYLVANIA BAR ASSOCIATION
AND OTHER LAW RELATED ENTITIES AGAINST UPL**

Each Keystone Alliance member association may communicate its position against UPL to law related entities within its local legal community and throughout Pennsylvania and offer its services to assist in efforts to curb UPL activity. This Position Statement may be distributed for this purpose.

**INCREASE EFFORTS TO EDUCATE THE PUBLIC, ATTORNEYS, PARALEGALS AND OTHER
NON-LAWYERS**

Each Keystone Alliance member association shall work to increase understanding of the role of paralegals in the practice of law. Additionally, each Keystone Alliance member association shall pursue educational opportunities through the Pennsylvania Bar Association, local bar associations and other law related entities.

These educational opportunities may include distributing educational materials, organizing, hosting or speaking at, seminars, and writing articles for the bar association and other legal publications, on topics such as:

- Pennsylvania Certified Paralegal Credentialing Program ,
- Paralegal utilization,
- Paralegal ethics,
- Issues surrounding non-lawyer services,
- Paralegal educational standards and programs, and
- The Paralegal profession (past, present, and future).

The Keystone Alliance has established the Pennsylvania Certified Paralegal Program. This voluntary credentialing program establishes a minimum standard for paralegals in Pennsylvania. It identifies individuals who are qualified by education, work experience and training and have the knowledge, skill and proficiency to perform substantive legal work requiring the knowledge of concepts and ethics and is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity to work under the direction of a lawyer or pursuant to state statute, administrative regulation or court authority in a capacity that, in most instances, would be performed by a lawyer in the absence of a paralegal.

Pennsylvania Certified paralegals are required to obtain 12 hours of continuing legal education every two years. Two of those hours must be in ethics.

ACT AS AN INFORMATION RESOURCE ON THE PARALEGAL PROFESSION

The Keystone Alliance shall be the state-wide information resource on the paralegal profession and shall respond to inquiries, distribute information and provide speakers on the paralegal profession and paralegal utilization. Keystone Alliance member associations may be contacted individually or through the Keystone Alliance.