

**REPORT OF THE
SPECIAL COMMITTEE
TO STUDY
MANDATORY
REGULATION OF
PARALEGALS**

February 22, 2011

**Scott Rubin
Chair**

INTRODUCTION

The Florida Registered Paralegal Program was adopted by the Supreme Court of Florida in 2007 with an effective date of March 1, 2008. The program is voluntary. An individual does not need to become a Florida Registered Paralegal in order to use the title paralegal in Florida. ¹ When the program was first proposed, some paralegals felt that the program, or something similar, should be mandatory. Most paralegals were in favor of the program as proposed.

The issue of mandatory versus voluntary regulation was raised at oral argument. When asked about whether The Florida Bar intended to make the program mandatory at some point in time, The Florida Bar's response was that whether it became mandatory would be based in part on how the voluntary program is received. The issue would be studied at a future date. ²

In July, 2010, the Florida Registered Paralegal Committee (hereinafter "FRP Committee") requested that the Board of Governors appoint a committee to study whether there should be mandatory regulation of paralegals. As the program had been in existence for almost three years, the FRP Committee felt that the time was right to study the issue of mandatory regulation. The FRP Committee's request was approved by the Board of Governors and, in September, 2010, President Mayanne Downs appointed the

¹ The rule defines paralegal as "a person with education, training, or work experience, who works under the direction and supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible." R. Reg. Fla. Bar 20-2.1(a).

² The following is the exact exchange that took place:

Q – Is it the Bar's representation to the Court, that this is truly a first step, in moving forward to mandatory regulation testing what, whatever?

A – Well, if, if 200 paralegals sign up out of what we understand are 16,000 according to the Department of Labor 16,000 paralegals the State of Florida, if 200 show up, then that is probably the end of it. But my understanding from Bar staff that is their phones are ringing off the hook from paralegals all over the state wanting to pay registration wanted to get registered so

Q – So then the answer to my question is

A – Truly a first step.

Some interpret this as the Bar stating the program would eventually be made mandatory. Others interpret this as the Bar stating that the issue would be studied. This later interpretation is supported by the context in which the questions were asked and the explanation given in response.

Special Committee to Study Mandatory Regulation of Paralegals (hereinafter "Special Committee").

The members of the Special Committee are:

Scott Rubin, chair
Kathy Cook
Patricia DeRamus, FRP
Sandra Diamond
Amy Guy, FRP
Mary Ann Morgan
John Schickel
Tamara Skonie, FRP
Richard Tanner

The Special Committee was charged with studying the following:

- 1) Whether the Supreme Court of Florida has the constitutional authority to require mandatory regulation of paralegals.
- 2) If the Supreme Court of Florida has the constitutional authority to require mandatory regulation of paralegals, whether there should be mandatory regulation of paralegals.
- 3) If there should be mandatory regulation, what should the mandatory regulation encompass and/or require? It is the mission of this committee to propose a framework that can be used for the adoption of rules. It is not the mission of this committee to draft specific rules.
- 4) If it is determined that the Supreme Court of Florida does not have the constitutional authority to require mandatory regulation of paralegals, what other options exist within the framework of The Florida Bar to provide additional regulation or recognition of the paralegal profession? It is the mission of this committee to propose a framework that can be used for the adoption of rules. It is not the mission of this committee to draft specific rules.

GOAL OF MANDATORY REGULATION

Prior to answering the questions set forth in the charge, the Special Committee determined it was necessary to set forth the goal of mandatory regulation as the goal could influence the answer to the questions. A subcommittee to outline recommended goals was appointed. The subcommittee's proposed goals and an explanation of what the goals would accomplish was presented to the Special Committee. The Special Committee approved the following as the goal of mandatory regulation:

The goal of mandatory regulation is that all persons using the title paralegal as defined by the Supreme Court of Florida as someone working under the direction and supervision of a member of The Florida Bar performing specifically delegated substantive legal work for which a member of The Florida Bar is responsible, be licensed by the Supreme Court of Florida/The Florida Bar, meet educational, certification, and ethical guidelines with penalties for those violating those professional responsibilities.

Mandatory regulation would:

Set a standard of education/experience for individuals holding themselves out as a paralegal since the general public perception is that paralegals performing substantive legal work for them have additional education/experience.

Provide a uniform state-wide policy on paralegals requiring continuing education to retain the title paralegal.

Provide public education and an expectation of the required core professional standards to meet the public expectation that persons working as paralegals are qualified professionals.

Assist attorneys in hiring competent paralegals with appropriate education and training.

Differentiate other support personnel in the legal community from paralegals.

AUTHORITY OF THE SUPREME COURT OF FLORIDA

After establishing the goals, the Special Committee began discussion of the charge. The first issue is whether the Supreme Court of Florida has the constitutional authority to require mandatory regulation of paralegals. The Special Committee requested that the question of whether enabling legislation was necessary for the Court to act be added. Based on research by Lori Holcomb, staff counsel to the Special Committee, the Special Committee found that the Supreme Court of Florida has the constitutional authority to require mandatory regulation of paralegals. As to enabling legislation, the Special Committee agreed with Ms. Holcomb's conclusion that whether enabling legislation is required may depend on the type of regulation and who will regulate. However, the farther the Supreme Court departs from the specific language of the constitutional grant of authority over the practice of law, it may be necessary to secure enabling legislation prior to any action by the Court.

SHOULD THERE BE MANDATORY REGULATION AND, IF SO, WHAT SHOULD
MANDATORY REGULATION ENCOMPASS AND/OR REQUIRE

The Special Committee then moved to the second question, whether there should be mandatory regulation of paralegals. After debate, the Special Committee decided that it was necessary to answer the third question – if there should be mandatory regulation, what should the mandatory regulation encompass and/or require — before determining whether there should be mandatory regulation. After a great deal of discussion and debate, the Special Committee voted to recommend that the Rules Regulating The Florida Bar be amended to state that an attorney be ethically prohibited from holding a nonlawyer employee out to the public as a paralegal unless the nonlawyer employee is a Florida Registered Paralegal, however, the attorney could ethically bill for a nonlawyer employee based on the activities performed regardless of the title the nonlawyer employee holds. The motion passed by a vote of 4 – 2. Those voting in favor were Tamara Skonie, Amy Guy, Patricia DeRamus, and Kathy Cook. Those voting against were Sandra Diamond, the movant, and Mary Ann Morgan. John Schickel and Richard Tanner were not present. Chair Scott Rubin did not vote.

After voting on the above, a motion was made to recommend that there should be mandatory regulation of paralegals in the form of the first motion. In other words, mandatory regulation should require that an attorney be ethically prohibited from holding a nonlawyer employee out to the public as a paralegal unless the nonlawyer employee is a Florida Registered Paralegal, however, the attorney could ethically bill for a nonlawyer employee based on the activities performed regardless of the title the nonlawyer employee holds. The vote on this motion was the same as the vote of on the previous motion.

The fourth question of the charge assumes that the Supreme Court of Florida does not have the authority to require mandatory regulation of paralegals. As the Special Committee found that the Court does have the authority, it was not necessary to address this question.

The Special Committee was tasked with making broad recommendations and not drafting rules to put the recommendations in place. However, the Special Committee believes that should their recommendations be approved by this Board and a second committee appointed to propose rule changes, the following issues will need to be considered:

Should the grandfathering provision be reinstated or should there be a new grandfathering provision? (The grandfathering provision of the FRP rule sunsets March 1, 2011. After that date anyone wishing to register must have education plus work experience, or certification from the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA).)

What type of education is necessary to become and remain an FRP?

Should someone have to be currently employed as a paralegal to be registered or to renew their registration? (The FRP rule requires that an individual be currently employed as a paralegal and be primarily performing paralegal work as defined by the rule in order to be eligible for registration and to renew their registration.)

How would someone enter the profession as an FRP?

Does the FRP rule and program have to be adapted to allow for and accommodate more registrants?

CONCLUSION AND RECOMMENDATION

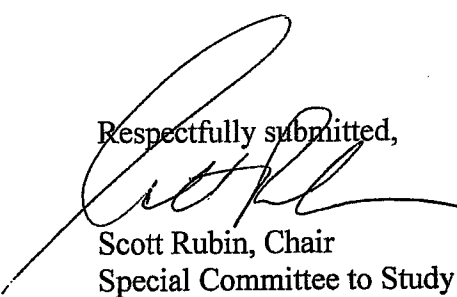
The Special Committee found that the Supreme Court of Florida does have the authority to require mandatory regulation of paralegals.

The Special Committee to Study Mandatory Regulation of Paralegals therefore, recommends that the Rules Regulating The Florida Bar be amended to state that an attorney be ethically prohibited from holding a nonlawyer employee out to the public as a paralegal unless the nonlawyer employee is a Florida Registered Paralegal. However, the attorney could ethically bill for a nonlawyer employee based on the activities performed regardless of the title the nonlawyer employee holds. As the vote was not unanimous, a minority report is attached.

The Special Committee was tasked with making broad recommendations and not drafting rules to put the recommendations in place. However, the Special Committee believes that should their recommendations be approved by this Board and a second committee appointed to propose rule changes, the following issues will need to be considered for the regulation of paralegals:

- Should the grandfathering provision be reinstated or should there be a new grandfathering provision? (The grandfathering provision of the FRP rule sunsets March 1, 2011. After that date anyone wishing to register must have education plus work experience, or certification from the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA).)
- What type of education is necessary to become and remain an FRP?
- Should someone have to be currently employed as a paralegal to be registered or to renew their registration? (The FRP rule requires that an individual be currently employed as a paralegal and be primarily performing paralegal work as defined by the rule in order to be eligible for registration and to renew their registration.)
- How would someone enter the profession as an FRP?
- Does the FRP rule and program have to be adapted to allow for and accommodate more registrants?

Respectfully submitted,



Scott Rubin, Chair
Special Committee to Study
Mandatory Regulation of Paralegals

MINORITY REPORT of
SPECIAL COMMITTEE TO STUDY
MANDATORY PARALEGAL REGULATION

A minority of the Special Committee consisting of Mary Ann Morgan, John Schickel, Sandra Diamond and Richard Tanner declined to support the recommendation that the Rules Regulating The Florida Bar be amended to state that an attorney be ethically prohibited from holding a nonlawyer employee out to the public as a paralegal unless the nonlawyer employee is a Florida Registered Paralegal. The minority states the following:

1. Though the Special Committee concluded that the Florida Supreme Court has the constitutional authority to require mandatory regulation of paralegals, a minority of the Special Committee declines to support mandatory regulation finding that the voluntary program established by Chapter 20 of the Rules Regulating The Florida Bar established an appropriate standard for minimum education and training of the Florida Registered Paralegals and adequately meets the needs of the members of the Florida Bar and their clients.
2. A minority of the Special Committee views the voluntary nature of the present FRP program as an enhancement to the professionalism of the non-lawyer personnel who take advantage of the designation and submits that a mandatory program would dilute the significance for those who have availed themselves of the registration.
3. The Committee minority is concerned that a mandatory program would have far reaching and unintended economic consequences caused by the shifting of hiring practices. Such a mandatory program could prove to be unduly burdensome to solo and small practice firms who often train their own non-lawyer personnel and confine their practices to specific areas of the law, such as family law, real estate, and probate. Businesses who currently designate their non-lawyer personnel as paralegals may be negatively impacted by mandatory regulation.
4. Members of the Florida Bar are ultimately responsible for the actions of all of their employees regardless of the title or training of the staff member. It is unwieldy and illogical to have differing sets of rules and disciplinary procedures for employees undertaking similar tasks but holding different titles. The Committee minority strongly supports the right of members of the Florida Bar to set the salaries, billing rates, billing practices, and training procedures of their non-lawyer personnel as long as the services of these employees are provided within the framework of the Rules Regulating The Florida Bar and current ethics opinions.

The Committee minority would oppose any regulation or restrictions which would limit the ability of lawyers to control their own hiring and salary prerogatives.

5. A mandatory program will require a substantial increase in Florida Bar staff time in order to process and review paralegal applicants and to ensure compliance with the requirements of such a mandatory program. It is anticipated that significant additional staff and resources will be necessary to ensure the oversight, appropriate regulation and administration of such program including compliance with continuing education requirements and disciplinary issues. It is unclear how such administrative costs will be paid.

Respectfully Submitted,

Mary Ann Morgan
John Schickel *
Richard Tanner *
Sandra F. Diamond

* John Schickel and Richard Tanner did not attend the meeting where the votes on the majority report were taken, and therefore, did not participate in the vote.