

Virginia State Bar Council To Review New Rule To Be Added To Virginia Supreme Court Rules Part Six, Section I: Rule 10—Paralegals/Legal Assistants

Pursuant to Part Six: Section IV, Paragraph 10(d)(i) of the Rules of the Supreme Court of Virginia, at its meeting on October 17 and 18, 2002, in Roanoke, Virginia the Virginia State Bar Council is expected to consider for approval, disapproval, or modification, a proposed new rule amendment to be added to the Unauthorized Practice Rules, Part Six, Section I, of the Rules of the Supreme Court of Virginia. This Rule is to be designated as Rule 10.

Part Six, Section I, Rule 10

The Virginia State Bar's Standing Committee on the Unauthorized Practice of Law ("UPL Committee") has proposed a new rule to be added to the UPL rules. This proposed rule addresses paralegals and legal assistants, specifically identifying and defining who is a paralegal/legal assistant, and the activities in which they are permitted to engage. The promulgation of this rule was prompted by concerns raised by members of the paralegal profession and the result of investigation and review of the issues by the UPL Committee. If the proposed rule is approved by Council, the Bar will petition the Virginia Supreme Court to approve the rule.

The chief purpose of the proposed rule is to clarify the definition of who is a paralegal or legal assistant and delineate those services which paralegals and/or legal assistants can perform and under what circumstances.

Inspection And Comment

The proposed Rule 10 may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00a.m. and 4:30p.m., Monday through Friday. Copies of the proposed Rule 10 can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at <http://www.vsb.org>.

Any individual or business which seeks to make comment in support of, or opposition to, the proposed Rule 10 must submit ten (10) copies of written comments to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, on or before September 20, 2002.

UNAUTHORIZED PRACTICE OF LAW RULE 10 LEGAL ASSISTANTS

UPR 10-101: Definitions.

- (A) "Legal Assistant" refers to a non-lawyer, who by experience or special training has knowledge of legal concepts, working for and under the supervision of a lawyer who ultimately assumes professional responsibility for the final work product.
- (B) "Paralegal" is a term equivalent to "legal assistant" for the purposes of this rule.

UPR 10-102: Performance of Services by Legal Assistant

- (A) A legal assistant shall not engage in the unauthorized practice of law and shall not encourage or contribute to any act by another that would constitute the unauthorized practice of law. A legal assistant shall not provide legal advice, other than to a supervising attorney.
- (B) A legal assistant shall not represent a client before any tribunal and shall not sign pleadings on behalf of another person. A legal assistant is permitted to sign legal documents as a witness or notary public, or in some other non-representative capacity, and may prepare pleadings and other legal documents for use by a supervising lawyer.
- (C) A legal assistant may provide services to assist a lawyer in the representation of a client, provided that:
 - (1) The lawyer maintains a direct relationship with the client and supervises all matters;

- (2) The lawyer remains fully responsible for all work done by the legal assistant on behalf of the client; and

- (3) The work product of the legal assistant is considered to be part of the lawyer's work product.

- (D) A legal assistant working under the supervision of a lawyer may participate in gathering information from a client during an initial interview, providing that this process involves nothing more than the gathering of factual data and that the legal assistant renders no legal advice to the client.

- (E) A legal assistant shall not determine for the client the validity of a client's legal claim.

- (F) A legal assistant may perform certain activities relating to the lawyer's fee agreement with the client. The legal assistant may transmit the document to the client and obtain the client's signature on the document. The legal assistant may answer factual questions regarding the fee agreement but such answers shall not include any advice as to the legal ramifications of the agreement's provisions.

- (G) A legal assistant may serve a limited role in settlement negotiations. A legal assistant may transmit information and documents between the lawyer and client, such as the latest settlement offer. A legal assistant may not evaluate the offer or make recommendations to the client regarding acceptance. A legal assistant may convey to the client the lawyer's evaluation or recommendation of such offer.

- (H) A legal assistant shall not provide, nor hold himself or herself out as being able to provide, legal services except under the

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direct supervision of an attorney authorized to practice law in the Commonwealth of Virginia.

UPR 10-103: Disclosure of Status

- (A) A legal assistant has an affirmative duty during any professional contact to clarify that the legal assistant is not an attorney.
- (B) A legal assistant may have a business card and may be included on the letterhead of a lawyer or law firm provided that the professional status of the legal assistant is designated. A legal assistant may sign letters on an attorney's letterhead, provided that such signature is followed by the

appropriate designation of the legal assistant's professional status.

UPR 10-104: Forming of Partnerships

A legal assistant shall not form a partnership with a lawyer if any of the activities of the partnership consist of the practice of law. A legal assistant is not prohibited from forming a business association with a member of the legal profession for purposes other than that of the practice of law.

UPR 10-105: Delegation by a Lawyer

A legal assistant may not accept the delegation by an attorney of any of the following responsibilities:

- (1) Establishing a lawyer/client relationship;

- (2) Establishing the fee to be charged for a legal service;

- (3) Rendering legal advice to a client; and

- (4) Maintaining a direct relationship with the client.

UNAUTHORIZED PRACTICE CONSIDERATIONS

UPC 10-1: Legal assistants are encouraged, but not required, to participate in continuing legal education courses, including courses in legal ethics and professional responsibility, to keep themselves informed of current developments in the law and the legal profession.