

REGISTERED PARALEGAL PROGRAM

[PROPOSED] ALASKA BAR RULE 44.2

Section 1. Purpose. The purposes of this voluntary registered paralegal program are to promote proper utilization of paralegals, assure that legal services are professionally and ethically offered to the public, assist in the development of paralegal standards, raise the profile of the paralegal profession, and standardize the expectations of the public and other legal professionals.

Section 2. Definitions.

(a) A "paralegal" is a person, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity to work under the supervision of a lawyer in a capacity that requires the performance of substantive legal work, using knowledge and understanding of legal concepts, the legal system, and procedural law. .

(b) An "Alaska Registered Paralegal" ("ARP") is someone who meets the definition of a paralegal and who meets the requirements for registration set forth in Section 3.

(c) "Paralegal work experience" is substantive legal work performed by a paralegal on a continuous basis for a specified period of time. In order to qualify as paralegal work experience for purposes of meeting the eligibility requirements set forth herein, the paralegal shall have performed substantive legal work for a period of not less than one (1) year. Time spent performing clerical work is specifically excluded.

(d) "Approved paralegal programs" are programs approved by the American Bar Association ("ABA") or other program that is in substantial compliance with the ABA

guidelines and accredited by a nationally or regionally recognized accrediting agency approved by the United States Department of Education.

(e) “Paralegal Committee” is a committee established by the Bar Association to administer the Registered Paralegal Program as further set out in Section 8 herein.

Section 3. Eligibility Requirements. Every applicant for an Alaska Registered Paralegal shall:

(a) File an application in a form prescribed by the Paralegal Committee and attach the applicable supporting documentation as further outlined in this section as proof of eligibility;

(b) Have attained the age of eighteen (18) years;

(c) Possess a minimum of one (1) year of paralegal work experience in Alaska within the last five (5) years; and

(d) Meet at least one (1) of the following education or combined education/paralegal work experience requirements:

(1) National certification as a Certified Legal Assistant ("CLA") or Certified Paralegal ("CP") through the National Association of Legal Assistants;

(2) National certification as a Registered Paralegal ("RP") through the National Federation of Paralegal Associations;

(3) A bachelor's or higher degree in a field other than legal studies in addition to ten (10) hours of substantive continuing legal education ("CLE") within the past twelve (12) months. The CLE courses must be approved courses as set out in Section 6 herein;

(4) A paralegal certificate or equivalent based on completing an ABA approved paralegal program;

(5) Completion of a paralegal program that consists of a minimum of sixty (60) semester hours (or equivalent quarter hours) of which fifteen (15) are substantive legal courses;

(6) Completion of a paralegal program that consists of fifteen (15) semester hours of substantive legal courses and have been employed as a paralegal in Alaska for at least two (2) years; or

(7) Have been employed as a paralegal in Alaska for at least four (4) consecutive years and obtained ten (10) hours of substantive continuing legal education within the past twelve 12 months. The CLE courses must be approved courses as set out in Section 6 herein.

Section 4. Registration and Renewal.

(a) The following shall be filed with the Paralegal Committee by an individual seeking to be registered as an Alaska Registered Paralegal:

(1) A completed application as provided by the Paralegal Committee,

(2) Evidence that the individual has satisfied the requirements of Section 3 by supplying evidence of a qualifying degree, diploma/certificate, or certification and attestation from the employing or supervising attorney(s) showing that the individual has the appropriate paralegal work experience;

(3) A completed Affidavit of Compliance form verifying that the applicant has read and will abide by the Code of Ethics and Responsibility set forth in Section 7; and

(4) The appropriate registration fee as set by the Paralegal Committee.

(b) Upon receipt of the items set forth in Sections 4(a) – 4(c), the Paralegal Committee shall review the items for compliance with Section 3. Any incomplete submissions will be

returned to the applicant. If the applicant meets all of the requirements set forth in Section 3, the applicant shall be added to the roster of Alaska Registered Paralegals maintained at the offices of the Alaska Bar Association. A certificate evidencing such registration shall be issued, and the designation ARP (Alaska Registered Paralegal) may be used by the recipient.

(c) The registration pursuant to this Section shall be annual. The renewal shall contain: 1) a statement that the individual is primarily performing paralegal work as defined in Section 3; 2) a statement that the individual is not ineligible for registration as set forth in Section 5; and 3) the renewal fee as set by the Paralegal Committee.

Section 5. Ineligibility for Registration or Renewal.

(a) Anyone who is currently suspended from the practice of law or disbarred or who resigns from the practice of law in lieu of discipline in any state or jurisdiction is ineligible for registration or renewal of registration. Persons in the identified categories will still be able to work as unregistered paralegals in the employ of an attorney under Alaska Bar Rule 15 (b)-(c).

(b) An individual who is applying for registration or already registered as an Alaska Registered Paralegal is required to inform the Paralegal Committee promptly of any fact or circumstance that would render the individual ineligible for registration or renewal.

Section 6. Continuing Legal Education.

(a) **Mandatory Continuing Legal Education.** In order to promote competence and professionalism in paralegals, Alaska Registered Paralegals are required to engage in at least ten (10) hours of Mandatory Continuing Legal Education (MCLE) per calendar year, two (2) hours of which shall be ethics or professionalism. Courses approved for credit by the Alaska Bar Association, the American Bar Association, the National Association of Legal Assistants (NALA), or the National Federation of Paralegal Associations (NFPA) will be deemed acceptable for purposes of this rule.

Section 7. Code of Ethics and Responsibility. The primary responsibility of monitoring the conduct and activities of all paralegals, whether they are Alaska Registered Paralegals or not, rests with the lawyer by whom the individual paralegal is employed and under whose direction the paralegal performs substantive legal work under Alaska Rule of Professional Conduct 5.3. This responsibility cannot be delegated, and this voluntary registration program does not relieve the lawyer of that critical responsibility.

Alaska Registered Paralegals shall observe the following standards:

(a) Alaska Registered Paralegals shall not engage in any ex parte communications involving the courts or any other adjudicatory body in an attempt to exert undue influence or to obtain advantage or benefit for only one party.

(b) Alaska Registered Paralegals shall not communicate, or cause another to communicate, with a party the paralegal knows to be represented by a lawyer in a pending matter without the prior consent of the lawyer representing such other party.

(c) Alaska Registered Paralegals shall not knowingly engage in fraudulent billing practices. Such practices may include, but are not limited to: inflation of hours billed to a client or employer; misrepresentation of the nature of tasks performed; and/or submission of fraudulent expense and disbursement documentation.

(d) Alaska Registered Paralegals shall avoid impropriety and the appearance of impropriety and shall not engage in any conduct that would adversely affect his/her fitness to practice. Such conduct may include, but is not limited to: dishonesty, interference with the administration of justice, and/or abuse of a professional position or public office.

(e) Alaska Registered Paralegals shall not knowingly assist any individual with the commission of an act that is in direct violation of the Alaska Rules of Professional Conduct or the rules or laws governing the jurisdiction in which the paralegal practices.

(f) Alaska Registered Paralegals shall serve the public interest by contributing to the improvement of the legal system and delivery of quality legal services, including pro bono services and community service, and shall be sensitive to the legal needs of the public and shall promote the development and implementation of programs that address those needs.

(g) Alaska Registered Paralegals shall preserve all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship through abiding by all legal authority governing confidential information in Alaska and refraining from use of confidential information to the disadvantage of the client or use of confidential information to the advantage of the paralegal or of a third person. Alaska Registered Paralegals may reveal confidential information only as provided in Alaska Rule of Professional Conduct 1.6.

(j) Alaska Registered Paralegals shall avoid conflicts of interest and shall disclose any possible conflict to the employer or client, as well as to prospective employers or clients and shall act within the bounds of the law, solely for the benefit of the client, and shall be free of compromising influences and loyalties. Neither the Alaska Registered Paralegal's personal or business interest, nor those of other clients or third persons, should compromise the Alaska Registered Paralegal's professional judgment and loyalty to the client. For purposes of this rule, "conflict of interest" means to assist in the representation of a client that will be directly adverse to another client. Alaska Registered Paralegals shall refer to the Alaska Rules of Professional Conduct 1.7, 1.8, 1.9, and 1.10 in determining if a conflict exists.

(k) Alaska Registered Paralegals shall reveal sufficient non-confidential information about a client or former client to reasonably ascertain if an actual or potential conflict of interest exists.

(l) Alaska Registered Paralegals shall not participate in or conduct work on any matter where a conflict of interest has been identified.

(m) In matters where a conflict of interest has been identified and the client consents to continued representation, a paralegal shall comply fully with the implementation and maintenance of an Ethical Wall.

(n) An Alaska Registered Paralegal's title shall be fully disclosed in all business and professional communications, inclusive of business cards, letterhead, brochures, directories, and advertisements to avoid misunderstandings and misconceptions about the paralegal's role and responsibilities.

(o) Alaska Registered Paralegals shall not engage in the unauthorized practice of law and shall comply with the applicable legal authority governing the unauthorized practice of law in Alaska.

Section 8. Paralegal Committee. There shall be a Paralegal Committee with the authority and jurisdiction required to perform the functions assigned to the Paralegal Committee and which shall be constituted and appointed as follows:

(a) **Membership, Appointment, and Eligibility.** The Paralegal Committee shall consist of not fewer than three (3) members, at least one (1) of whom is an Alaska Registered Paralegal and at least one (1) of whom is a member of the Alaska Bar Association. Members of the Paralegal Committee and the chair of the Paralegal Committee shall be appointed by the President of the Alaska Bar Association. All appointees shall be of legal age and shall be residents of Alaska

(b) **Terms.** The terms of the initial committee members shall expire as follows: one member shall serve a one-year term, one member shall serve a two-year term, and one member shall serve a three-year term. Following the expiration of the initial terms, the

terms of each of the members shall be for 3 years from the date of administration of the oath of service on the Paralegal Committee or until such time as their successors are appointed and qualified, so as to continue terms on a staggered basis. Continuous service of a member shall not exceed 6 years.

(c) **Disqualification.** No member of a Paralegal Committee shall perform any Paralegal Committee function when that member:

- (1) is related by blood or marriage to the complainant or respondent;
- (2) has a financial, business, property, or personal interest in the matter under consideration or with the complainant or respondent;
- (3) has a personal interest that could be affected by the outcome of the proceedings or that could affect the outcome; or
- (4) is prejudiced or biased toward either the complainant or the respondent.

Upon notice of the above prohibitions, the affected members should recuse themselves from further proceedings. The Paralegal Committee chair shall have the power to disqualify any member from any proceeding in which any of the above prohibitions exists and is stated of record or in writing in the file by the chair.

(d) **Removal.** Any member may be removed from service by the Paralegal Committee.

(e) **Paralegal Committee Meetings.** The Paralegal Committee should meet at regularly scheduled times, not less frequently than quarterly each year.

(f) **Authority.** It is the duty of the Paralegal Committee to receive and evaluate membership applications and renewals and complaints against Alaska Registered Paralegals. The Paralegal Committee shall have the authority to approve, deny, remove or revoke an

individual's registration as an Alaska Registered Paralegal in accordance with the procedures set forth elsewhere in this section.

(g) **Registration Suspension.** A registration certificate issued pursuant to these rules may be suspended or revoked for any of the following reasons:

(1) conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty, or false statement;

(2) fraud, dishonesty, or corruption that is related to the functions and duties of an Alaska Registered Paralegal;

(3) gross incompetence or unprofessional or unethical conduct;

(4) willful, substantial, or repeated violation of any duty imposed by statute, rule, or order of court;

(5) fraud or misrepresentation in obtaining or renewing registration status;

(6) noncompliance with continuing education requirements;

(7) nonpayment of renewal fees; or

(8) violation of the Code of Ethics and Responsibility set forth elsewhere in these rules.

Section 8.1. Complaint Processing.

(a) **Complaints.** A complaint against an Alaska Registered Paralegal may be initiated either by a sworn complaint asserting a violation of these rules or by the Alaska Bar Association on its own motion.

(b) **Review by Paralegal Committee.** The Paralegal Committee shall review the complaint and determine whether the alleged conduct, if proven, would constitute a violation of these rules. The Paralegal Committee may conduct a preliminary, informal investigation to aid in this determination and may determine whether the alleged conduct of a complaint, if proven,

would constitute a violation of these rules. If the Paralegal Committee determines that the facts, if proven, would not constitute a violation, the Paralegal Committee may decline to pursue the complaint and cause the file to be closed. The complainant shall be notified of a decision not to pursue a complaint and shall be given the reasons therefor.

(c) **Referral to Bar Counsel.** The Paralegal Committee may refer a file to Bar Counsel for further investigation or action as authorized elsewhere in these rules.

(d) **Notification of Violation.** If a complaint is referred to the Paralegal Committee, the Paralegal Committee shall review any materials and conduct such additional investigation as the Committee determines is appropriate. If after reviewing the file a majority of the Paralegal Committee finds probable cause to believe that a violation of these rules has occurred, the chair of the Paralegal Committee will send written notice thereof to the Alaska Registered Paralegal identifying the alleged violation. The notice shall be sent by certified U.S. mail directed to the last mailing address on file.

(e) **Response to Notice of Violation.** Within 30 days from the receipt of the notification, the Alaska Registered Paralegal shall file a written response. If the Alaska Registered Paralegal fails to respond, the violations identified in the finding of probable cause shall be deemed admitted.

(f) **Committee Review.** After the filing of the written response to the finding of probable cause or following the expiration of the time within which to file a response if none is filed, the Paralegal Committee shall review the complaint, the finding of probable cause, the response (if any), and any other pertinent materials, and decide whether to dismiss the proceeding or issue a proposed disposition. The Committee shall promptly send written notice of its decision to the Alaska Registered Paralegal by certified U.S. mail directed to the last mailing address on file.

Section 8.2 Investigation.

(a) **Conduct of Proceedings.** The proceedings of the Paralegal Committee when testimony is taken may be informal in nature and the committee shall not be bound by the rules of evidence.

(b) **Taking Testimony.** The Paralegal Committee and members thereof conducting investigations are empowered to take and have transcribed the testimony and evidence of witnesses. If the testimony is recorded stenographically or otherwise, the witness shall be sworn by any person authorized by law to administer oaths.

(c) **Rights and Responsibilities of Respondent.** The respondent may be required to appear and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be represented by counsel.

(d) **Rights of Complaining Witness.** The complaining witness is not a party to the investigation. The complainant may be granted the right to be present at any Paralegal Committee proceeding when the respondent is present before the Committee to give testimony. The complaining witness shall have no right to appeal the finding of the Paralegal Committee.

Section 8.3. Disposition of Complaints. Upon concluding its investigation, the Paralegal Committee shall determine which of the following action(s) should be taken:

- (a) close the matter on a finding of no violation;
- (b) require that a specified continuing education course be taken;
- (c) accept an affidavit from the Alaska Registered Paralegal acknowledging that the conduct surrounding the complaint was a violation of these rules and that the Alaska Registered Paralegal will refrain from conduct that would violate these rules;

(d) suspend the Alaska Registered Paralegal's registration certificate for a period not to exceed 1 year;

(e) revoke registration certificate; or

(f) deny a request for renewal.

Section 8.4 Review of Paralegal Committee Action.

(a) **Review by the Designated Reviewer.** Notice of Paralegal Committee action recommending revocation, suspension, or denial of renewal shall be given to the designated reviewer for review. Upon review of the Paralegal Committee action, the designated reviewer may affirm the action of the Paralegal Committee, request the Paralegal Committee to reconsider its action, or refer the Paralegal Committee action to the Disciplinary Board of the Alaska Bar Association for its review. The request for a Paralegal Committee reconsideration or referral to the disciplinary review committee shall be in writing and must be made within 30 days of notice of the Paralegal Committee action. If the designated reviewer fails to make the request for reconsideration or referral within the time prescribed, the Paralegal Committee action shall become final.

(b) **Disciplinary Board Action on Recommendations of the Paralegal Committee.** On review of a report and recommendation of the Paralegal Committee, the Disciplinary Board may confirm, reject, or amend the recommendation in whole or in part.

(c) **Notice of Disciplinary Board Action.** Bar counsel shall give notice of Disciplinary Board action to the respondent, complainant, and Paralegal Committee.

(d) **Filing Service on Disciplinary Board.** All matters to be filed with or served upon the Disciplinary Board shall be filed with the executive director. The executive director shall be the custodian of the official records of the Alaska Registered Paralegal Program.

Section 9. Files.

(a) **Files Are Property of Bar.** All matters, including files, preliminary investigation reports, interoffice memoranda, records of investigations, and the records of other proceedings under these rules are property of the Alaska Bar Association.

(b) **Investigatory Record.** The record before the Paralegal Committee shall consist of all reports, correspondence, papers, and recordings furnished to or received from the respondent and the transcript of Paralegal Committee meetings or transcribed testimony, if the proceedings were attended by a court reporter; provided, however, that the Committee may retire into private session to debate the issues involved and to reach a decision as to the action to be taken. This private session is not part of the record; however, any decision reached is part of the record and the private session will be noted. The investigatory record shall consist of the record before the Paralegal Committee, and, in addition, any other materials provided by the Paralegal Committee to the complainant or respondent and any materials received from the respondent, complainant, or any witness.

(c) **Limitations on Disclosure.** Any material provided to or promulgated by the Alaska Bar Association that is confidential under applicable law shall remain confidential and shall not be disclosed except as authorized by the applicable law. If this type of material is made a part of the investigatory record, that portion of the investigatory record may be sealed by the Paralegal Committee chair.

(d) **Disclosure of Information.** Unless otherwise ordered by a court, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) **Response to Inquiry.** Representatives of the Alaska Bar Association, authorized by the Board of Governors, shall reply to inquiries regarding a pending or closed investigation. The Alaska Bar Association may charge a reasonable fee for copying documents consistent with applicable law.

(f) **Response to False or Misleading Statements.** If public statements that are false and misleading are made about any investigation brought pursuant to this chapter, the Alaska Bar Association may make any disclosure consistent with applicable law necessary to correct such false or misleading statements.

(g) **Providing Material to Other Agencies.** Nothing contained herein shall prohibit the Alaska Bar Association from providing material to any state or federal law enforcement or regulatory agency, including but not limited to: United States Attorney, state attorney, the National Association of Legal Assistants or the National Federation of Paralegal Associations and equivalent organizations, the Alaska Board of Bar Examiners and equivalent entities in other jurisdictions, paralegal grievance committees and equivalent entities in other jurisdictions, and unlicensed practice of law committees and equivalent entities in other jurisdictions.

Section 10. Immunity.

The members of the Paralegal Committee, the bar staff and counsel assisting the Committee, shall have absolute immunity from civil liability for all acts in the course of their official duties.