



# **South Dakota Paralegal Association, Inc.**

**Founded in 1989**

**Please Reply To:**

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February 22, 2007

Honorable Chief Justice Gilbertson  
South Dakota Supreme Court  
500 East Capitol Avenue  
Pierre, SD 5501-5070

Re: Proposed Changes to SDCL 16-18-34 through 16-18-34.7

Dear Chief Justice Gilbertson:

As per the request of the Justices at the Rules Hearing on February 15, 2007, the South Dakota Paralegal Association, with the endorsement of the Legal Assistants Committee of the State Bar, respectfully presents its position on the proposed changes to the rules governing paralegals in South Dakota. An original and ten copies are provided.

First, I respond to a few of the comments made by Mr. Nasser both at the hearing on February 15, 2007, and in his December 15, 2006, letter to the Court that we received at the hearing. The proposed changes to the rules have not been pushed by the "Certified Paralegal Association." I am not aware of an organization by that name. The rule changes were proposed by the South Dakota Paralegal Association (SDPA) after receipt of a request by the Legal Assistants Committee of the State Bar in the spring of 2005 to do so. However, please note that the membership of SDPA is not entirely certified paralegals. SDPA has 120 members, of which only 63 (52 percent) are certified.

Mr. Nasser also inaccurately states that his wife Carole and those paralegals who are not certified or formally trained will "soon be out of business." If that were true, the 48 percent of non-certified members of SDPA would not support the proposed changes. The grandfather clause specifically states that everyone who currently qualifies under the statute would continue to qualify to work as a paralegal in South Dakota. In addition, there is no such thing as a "recertification" for Carole Nasser unless she chose to become certified by one of the three national certifying organizations. Since Carole Nasser would be covered by the grandfather clause, she would not be required to become certified.

As explained in both written materials presented prior to the hearing and verbally at the hearing, the “in-house” qualification was not excluded in the proposed revision of SDCL 16-18-34.1, but incorporated into the certification qualification. There are three national paralegal certification examinations, two of which have a years of experience requirement as a qualification to sit for the exam. Those requirements are set forth as follows:

- a) National Association of Legal Assistants [NALA] - Certified Legal Assistant/Certified Paralegal [CLA/CP] exam: A high school diploma or equivalent plus seven years’ experience as a legal assistant under the supervision of a member of the Bar, plus evidence of a minimum of twenty (20) hours of continuing legal education credit to have been completed within a two year period prior to the examination date.
- b) National Association for Legal Professionals [NALS] - Professional Paralegal [PP] exam: Any person who has five years’ experience performing paralegal/legal assistant duties.

The concern of SDPA, the Legal Assistants Committee of the State Bar, and other members of the Bar is the purely subjective “in-house training” as contained in the current statute. Those provisions were removed in the proposal and should not be re-inserted as suggested at the hearing. Mr. Nasser suggests attorneys will lose autonomy in their practice, but there is a need for objective evidence of training and attainment of skills. The best measure of that evidence is the ability to pass a certification test.

Mr. Nasser objects to his paralegal being tested on substantive areas of the law in which she will never practice. As I alluded to at the hearing, NALA’s Certified Paralegal exam is a two day exam consisting of the following sections: Communications (1 hour 30 minutes), Judgment & Analytical Ability (2 hours 30 minutes), Ethics (1 hour), Legal Research (1 hour 30 minutes), and Substantive Law (2 hours). Applicants taking the exam choose four of the following nine areas of law for the Substantive Law portion of the exam: Administrative Law, Bankruptcy, Contract, Business Organizations, Criminal, Litigation, Estate Planning & Probate, Real Estate, and Family Law. Mr. Nasser seems to be advocating for the small town, small office attorney. It is not unreasonable to assume that most small town, small office attorneys practice in more than one area of the law. However, on the other side of the coin, Mr. Nasser’s concern of a specialized practice is understood by most attorneys who are all required to take classes and pass the Bar in areas of the law in which they will never practice. Paralegals possessing paralegal degrees face the same situation. I have personally specialized in medical malpractice defense for nearly 15 years. With the exception of litigation and personal injury studies, medical malpractice is an area of the law that was not covered in any of my classes as I obtained my Bachelor’s Degree in Paralegal Studies nor when I sat for the Certified Paralegal exam.

Mr. Nasser has expressed concerns about the expense of certifying paralegals. The increase in costs to ensure the competency and quality of paralegals is relatively minor. The fee for taking NALA’s CLA/CP exam is \$250 for members and \$275 for nonmembers. The fee for

taking the NALS's PP exam is \$150 for members and \$200 for nonmembers. These fees can be recouped in a few billable hours of the paralegal.

Recertification consists of 50 hours of CLE's within 5 years. The recertification fee is \$50 every five years. CLE hours can be obtained through various sources at little or no cost. The State Bar of South Dakota allows paralegals employed by members of the Bar to attend CLE's, usually at no cost. In addition, education is the main purpose of the South Dakota Paralegal Association. SDPA is required as a NALA affiliate to provide a minimum of 10 continuing education hours a year, which are divided between a seminar that is held in conjunction with the State Bar Convention and a fall seminar that is held in a location on the opposite side of the state from the State Bar Convention for convenience and reduction of travel costs for both east and west river paralegals. The average nonmember cost for each seminar is \$65 for a total of \$130 per year (\$55/\$110 for members), again, which can be recouped in a few billable hours of the paralegal.

Mr. Nasser also opined that educated and/or certified paralegals will expect higher pay. Even though it is logical to assume that a higher degree of training and/or education increases the opportunity for higher compensation, a survey conducted by NALA indicates otherwise. According to NALA's *2004 National Utilization and Compensation Survey Report*, those with only a high school education and years of experience had higher average annual compensation than those with degrees or certifications. That survey can be reviewed through the NALA website at the following link: [http://www.nala.org/Survey\\_Table.htm](http://www.nala.org/Survey_Table.htm).

Mr. Nasser's item number four on page two of his December 15, 2006, letter to the Court contains an assertion that warrants comment. In this paragraph, it is his opinion that attorneys who can no longer bill for a paralegal's time will have an incentive to pad their own hours to keep revenues at the necessary level. This unethical practice would not be tolerated by the members of the Bar.

Members of SDPA, again with only 52 percent of its membership being certified paralegals, overwhelmingly approved and supported the proposed changes to the statute as did the State Bar at their Annual Meeting held on June 23, 2006. Mr. Nasser is the only attorney who has presented a written opposition to Court. With that being said, both SDPA and the Legal Assistants Committee of the State Bar respectfully request that the proposed changes to the statute remain as originally presented.

However, should the Court disagree and render a decision that would include the subjective determination of in-house training, Mr. Nasser's proposal dated February 21, 2007, that adds new rules concerning "legal assistants" is not adequate. First of all, Mr. Nasser's proposal does not define a "legal assistant," nor are the qualifications of such "legal assistant" adequate. He proposes the following qualifications:

- 1) A minimum of three years of law related experience under the supervision of a licensed attorney, including at least six months of in-house training as a “legal assistant;” or
- 2) Two years of in-house training as a “legal assistant”.

These two provisions were deleted from the current statute in our proposal. Three years of “law related experience” is insufficient and not defined. As I stated at the hearing, that could be a person who worked as a receptionist for three years with absolutely no substantive law experience. It is also the belief that two years is an insufficient amount of time to train a “legal assistant” and the minimum requirement should be five years.

It is the opinion of SDPA and the Legal Assistants Committee of the State Bar that clients should only be billed for work performed by individuals who have demonstrated that degree of proficiency and knowledge necessary to successfully complete one of the examinations or programs of study set forth in SDCL 16-18-34.1.

In closing, SDPA respectfully requests that you carefully consider that the majority of the State Bar and both certified and non-certified paralegals of the South Dakota Paralegal Association voted to urge adoption of the original proposal of which we are seeking approval. Thank you for allowing us the opportunity to address Mr. Nasser’s comments and proposals and we hope we have satisfactorily addressed your questions and concerns.

Sincerely,

Teri J. Braun, B.S., CP  
Certified Paralegal

cc: Thomas C. Barnett, Jr.  
Legal Assistants Committee of the State Bar  
N. Dean Nasser, Jr.  
Shirley Jameson-Fergel, Clerk of the South Dakota Supreme Court