

## **NEW YORK STATE CERTIFIED PARALEGAL PROGRAM**

Regulation of Paralegals is defined by the Empire State Alliance of Paralegal Associations, Inc. (“ESAPA”) as the process by which a governmental or other entity authorizes general practice in the Paralegal profession to individuals meeting predetermined qualifications that include: a) an educational requirement; b) the passage of a proficiency based examination; c) continuing legal education; d) adherence to a code of ethics; and e) other criteria as required by the governmental or other entity.

### **I. PURPOSE**

ESAPA acknowledges that there is a need for cost-effective legal services. ESAPA further recognizes that the use of qualified paralegals by lawyers, law firms, judicial, educational, commercial and governmental entities is the best way to provide the community with such cost-effective legal services. In recognition of the above, ESAPA enacts the following New York State Certified Paralegal Program.

### **II. DEFINITIONS**

As used in this Program, unless the context otherwise requires:

1. “Program” shall mean the New York State Certified Paralegal Program;
2. “Code of Ethics and Professional Responsibility” shall mean the rules of professional conduct for paralegals as adopted by ESAPA;
3. “Continuing Legal Education” (“CLE”) shall mean any legal or other educational activity or program which is designed to maintain and improve the professional competency of practicing paralegals and is defined and approved by ESAPA, and/or is accredited CLE for attorneys;
4. “Lawyer” or “Attorney” shall mean any person licensed or authorized to practice law under the laws of their state;

5. “Certification” shall mean authority granted by ESAPA under this Program to practice as a New York State Certified Paralegal, as evidenced by issuance of a Certification document;

6. “Certified Paralegal” shall mean a Paralegal who holds a valid Certification under the provisions of this Program;

7. ”Paralegal”<sup>(1)</sup> shall mean a person qualified through education, training or work experience to perform substantive<sup>(2)</sup> legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform their work;

8. “Paralegal Practice” shall mean offering to provide or providing any substantive legal service or work not prohibited by any other state or federal statute or Supreme Court Rule, the adequate performance of which requires paralegal education, training, and experience in the application of special knowledge of legal concepts and skills to that legal service;

9. “Paralegal School” shall include an institution of post-secondary education or program either approved by the American Bar Association (“ABA”) or in substantial compliance with the ABA Guidelines for Paralegal Programs, that offers the minimum educational requirements necessary for qualification for certification as determined by ESAPA;

10. “Person” shall mean any individual;

11. “ESAPA” shall mean any committee, board, or organization authorized to accept applications and confer the New York State Certification documents;

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<sup>(1)</sup> *Historically, the terms paralegal and legal assistant have been used synonymously, but recently two separate professions have emerged. For the purposes of this program, a legal assistant meeting the definition set forth therein for paralegal, shall be included within the definition of paralegal.*

<sup>(2)</sup> *Substantive shall mean work requiring recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts.*

12. “State” shall include any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

### **III. RESTRICTION ON USE OF NAME OR TITLE**

A. No person shall purport to be, assume the duties incident to, or use the title “New York State Certified Paralegal” or “NYSCP”, or any words or letters which indicate that the person has met the requirements of this Program, unless such person holds a valid and current Certification from ESAPA.

B. Non-Lawyer Disclosure. No Paralegal certified under this Program shall engage in the practice of law, nor shall such Paralegal:

1. represent themselves or allow themselves to be represented as a licensed attorney; OR
2. use the title of attorney; OR
3. associate or allow to be associated with their name any term which would suggest that they are qualified to engage in the practice of law.

The Paralegal shall clearly identify themselves by appropriate identification as a Paralegal.

### **IV. ESAPA CERTIFICATION COMMITTEE**

A. ESAPA Membership, Appointment, Term, Oath, Quorum.

1. There is hereby created an independent committee to be known as ESAPA Certification Committee (“Committee”) which shall promulgate and administer regulations necessary to effectuate the provisions of this Program and shall have complete supervision over the administration of the provisions of this Program. The Committee shall consist of at least three (3) members but no more than five (5) members, appointed by the ESAPA Board.

2. The ESAPA Board will appoint the Chairperson of the Committee to facilitate the duties of the Committee. The Chairperson shall provide written reports each quarter

to ESAPA Board and is encouraged to attend all regularly scheduled meetings of the ESAPA Board, including, but not limited to, telephone conferences and in-person meetings.

3. All members of the Committee shall be residents of, or be employed in, the State of New York. At least one member shall be an Attorney currently licensed to practice in New York State and can demonstrate that they have been actively involved with the Paralegal profession as an employer of paralegals **OR** a paralegal educator from an institution that is approved by the ABA. The remaining members shall be New York State Certified Paralegals as defined by this Program. For the purposes of initial appointments to the Committee, Paralegal members must obtain Certification under this Program within three (3) months of appointment to remain on the Committee.

4. The Committee members shall be appointed by ESAPA Board for terms of two (2) years. No member shall serve more than one (1) consecutive term (i.e., limit of four (4) consecutive years). Initial terms shall begin on the effective date of this Program. Every unexpired term shall be filled only for the remainder of that term and the person appointed to fill such vacancy shall be eligible for reappointment for one full term only.

5. Whenever an appointment is to be made to the Committee, ESAPA shall solicit nominations from each member association, current individual Certified Paralegals, and Bar Association(s) and ABA approved paralegal education programs. Names shall be submitted to the Committee at least sixty (60) days prior to the appointment date or within thirty (30) days of a vacancy. Such submissions shall be made in writing to an ESAPA President.

6. ESAPA Board shall endeavor to geographically diversify the members of the Committee to the extent possible.

7. A majority of the Committee shall constitute a quorum. Once a quorum has been established all votes of the Committee shall be deemed valid. The concurring vote of a majority of the Committee shall be considered as the action of the Committee.

8. ESAPA Board may, by a majority vote, suspend or remove any member of the Committee for misfeasance, malfeasance, gross inefficiency, non-participation or misconduct.

9. In the event a Committee member is removed, the removal shall be effective and a vacancy shall be deemed to exist as of the date of ESAPA's finding.

10. Any vacancy which occurs on the Committee for any reason shall be filled for the unexpired term according to Section (4), above.

B. Powers and Duties of the Committee.

1. The Committee shall administer, coordinate, and enforce the provisions of this Program; evaluate the qualifications of applicants; process renewals; create and maintain a log or database of persons who are issued a Certification; and shall conduct confidential investigations of persons engaging in practices which may violate the provisions of this Program.

2. The Committee shall keep such records as shall be necessary to affect an orderly dispatch of business.

3. The Committee shall follow rules and regulations set forth by ESAPA, which include but are not limited to, qualifications, renewals, discipline and enforcement proceedings, and ethical standards of practice.

C. Certification Approval by Committee.

The Committee shall have the power to issue a Certification to applicants who meet the requirements set forth in this Program. All applicants must include with their application the initial fee and any subsequent fees assessed by ESAPA. The Certification shall be issued within sixty (60) days of completion of **all** requirements.

D. Request for Funds by Committee. Committee can request funds for expenses regarding the Certification Program, to be approved at the discretion of the ESAPA Board.

E. Committee Members Compensation. Committee members shall not be compensated for their role as a member of the Committee.

F. Indemnification. Members of the Committee, its agents, and employees shall be indemnified from suit in any action civil or criminal, which is based upon any official act or acts performed by them in good faith.

G. Request to ESAPA for Opinion on Actions which May Constitute Unacceptable Conduct.

1. In order to assist a Certified Paralegal in determining if an action would constitute unacceptable conduct under the provisions of this Program, the Certified Paralegal may request an opinion of ESAPA by written request submitted to ESAPA Board. ESAPA may, at its discretion, cause a formal written opinion to be written and distributed publicly if the request addresses an issue of such public interest that ESAPA's opinion on the subject is deemed desirable. Otherwise, an informal letter opinion to the requester shall become a part of the procedural record of ESAPA.

2. In formulating a response to a request, ESAPA may request an opinion from any related professional association or consumer related interest group; however, ESAPA shall not be bound by the supplemental opinion.

3. ESAPA shall keep a permanent record of all the requests made and the response thereto. ESAPA may publish its opinions, at the discretion of the ESAPA Board.

## **V. QUALIFICATIONS FOR NEW YORK STATE CERTIFICATION**

A. Mandatory Requirements. Any person, to be eligible for Certification under this Program, shall:

1. Be eighteen (18) years of age or older; AND
2. Be a resident of, or employed in, the State of New York; AND
3. Be of good moral character pursuant to paragraph B below; AND

4. Be employed as a paralegal as defined herein; AND
5. Meet one of the following minimum requirements:
  - a. have successfully passed the Paralegal Advanced Competency Exam by the National Federation of Paralegal Associations, Inc. or the NALA Certified Paralegal Exam by the National Association of Legal Assistants now known as NALA – The Paralegal Association and such certification must be current; OR
  - b. associate’s degree in paralegal studies from an institutionally accredited school; and six (6) years substantive paralegal experience; OR
  - c. associate’s degree in any subject from an institutionally accredited school and a Certificate from a Paralegal Program; and six (6) years substantive paralegal experience; OR
  - d. associate’s degree in any subject from an institutionally accredited school; and ten (10) years substantive paralegal experience; OR
  - e. bachelor’s degree in paralegal studies from an institutionally accredited school and three (3) years substantive paralegal experience; OR
  - f. bachelor’s degree in any subject from an institutionally accredited school and a Certificate from a Paralegal Program; and three (3) years substantive paralegal experience; OR
  - g. bachelor’s degree in any subject from an institutionally accredited school and six (6) years of substantive paralegal experience; OR
  - h. A member of the active duty, retired, former military, or the reserve component of any branch of the US Armed Forces, qualified in a military operation specialty with the rank of at least an E6 in a paralegal rate as a Staff Sergeant (Army and Marines), Petty Officer First Class (Navy), Technical Sergeant (Air Force), or higher as a supervisory paralegal within that branch of service and 12 hours of continuing legal education (“CLE”), including 1 CLE hour of ethics, within 2 years preceding the Application; OR
  - i. Prior to January 1, 2022, the applicant has received a high school diploma or its equivalent, has a minimum of 10 years of substantive paralegal experience, as defined in II.7.

B. ESAPA's Determination on Character and Fitness Criteria. All applicants at the time of application and at all times maintaining certification through this program, shall be of good moral character and fitness consistent with the ESAPA Code of Ethics.

The application shall be rejected immediately if the Applicant:

1. Has been convicted of a felony or comparable crime as defined by an individual state that does not have a felony designation;

**OR**

2. Is currently under suspension, termination, or revocation of a certificate, registration, or license to practice by a professional organization, court, disciplinary board, or agency in any jurisdiction

C. Appeal. An applicant has the right to appeal a denial of an application or renewal based on the provisions Section XI, below.

## **VI. ESAPA CERTIFICATION FEES**

Any person who qualifies to be a Certified Paralegal under the provisions of this Program and who desires to apply for Certification shall pay to ESAPA a reasonable fee as determined by ESAPA. The Certification shall be renewed every two (2) years by ESAPA. Any renewal of the Certification as provided for in this Program shall be subject to payment of a reasonable renewal fee as determined by ESAPA. ESAPA may, in its discretion, reduce or waive the above fee requirements in extraordinary circumstances.

## **VII. EXPIRATION DATE OF CERTIFICATION; RENEWAL; AND CONTINUING LEGAL EDUCATION REQUIREMENTS**

Every Certification issued to a Paralegal by ESAPA shall expire two (2) years after the issue date unless sooner revoked, suspended, or canceled. The date of expiration shall be printed on such Certification.

All Certified Paralegals shall, before the Certification expiration, renew their Certification by payment to ESAPA of a renewal fee as set by regulation of ESAPA, and upon submission of proof and a statement of compliance with the mandatory Continuing Legal Education requirements

as set forth therein. If the Certified Paralegal fails to timely renew, their certification is subject to automatic suspension. Any Certification thus suspended may be restored within forty-five (45) days after the automatic suspension upon application to, and approval by, ESAPA and compliance with the requirements of renewal and the payment of a reinstatement fee as determined by regulation of ESAPA.

All Paralegals certified under this Section are required to earn a minimum of twelve (12) Continuing Legal Education credits every two (2) years to satisfy the requirements for renewal of their Certification. At least one (1) of the required Continuing Legal Education Credits shall be in Ethics. Continuing Legal Education Credits obtained directly from or pre-approved by the following organizations/entities are deemed pre-approved by ESAPA as a proper organization/entity to grant Continuing Legal Education credits and will be accepted by ESAPA for renewal:

- ESAPA member associations;
- all bar associations;
- courts of all jurisdictions within the United States;
- inns of court;
- National Federation of Paralegal Associations, Inc. (NFPA), National Association of Legal Assistants, Inc. (NALA) or American Alliance of Paralegals, Inc. (AAPI) - either sponsored by them or bearing their accreditation on the certificate of attendance; and
- law firms and in-house legal departments (at the discretion of ESAPA).

## **VIII. COMPLAINTS –NOTICE**

Upon a written complaint to ESAPA, verified by affidavit, of any person setting forth facts which, if proven, would constitute grounds for discipline, suspension or revocation of the Certification under this Program, the Committee shall, within three (3) business days, provide notice to the Certified Paralegal of the Complaint and allow thirty (30) days for the Certified Paralegal to provide a written response.

Upon receipt of the response, or in the absence of a response within the time allowed, the Committee shall investigate the actions of the Certified Paralegal and issue a written determination

within thirty (30) days. Notice of the written determination must be provided to the Certified Paralegal and complainant within ten (10) days of the date the determination was issued.

Complaints may be found to be:

- a. Unfounded, no further action.
- b. Alleged Violation, not sustained.
- c. Minor Violation, written reprimand placed in file for specified period of time.
- d. Major Violation, specific discipline including loss of credential recommended or imposed.

For the purposes of this Section, notice may be accomplished by personal delivery or by certified mail, with return receipt requested, to the Certified Paralegal's last known work and/or home address of record. The paralegal has a right to counsel.

Appeals of any decision under this Section shall be handled in accordance with the process as prescribed in Section XI, below.

Except for automatic suspension, no Certification shall be revoked, suspended or reinstated without due process as set forth above. ESAPA may at any time proceed against a Certified Paralegal on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its investigation, utilizing the process described in the preceding paragraph. Such information shall be held strictly confidential until such time as a Certification is revoked or suspended. ESAPA shall keep a certified record of any proceedings.

#### **IX. REVOCATION OR SUSPENSION OF, OR REFUSAL TO GRANT, ISSUE, OR RENEW CERTIFICATION**

ESAPA, as provided in this Program, may revoke or suspend any Certification issued; may refuse to grant, issue or renew any Certification; or, may discipline the Certified Paralegal for any one or any combination of the following causes:

- a. Fraud or deceit in procuring or attempting to procure the Certification.
- b. Dishonesty, fraud or willful, wanton misconduct resulting in negligence in Paralegal Practice.

- c. Deception, misrepresentation or unethical conduct in Paralegal Practice.
- d. Violation of any of the provisions of this Program or rules or regulations promulgated by ESAPA under this Program.
- e. Violation of any section of the Code of Ethics promulgated by ESAPA.
- f. Conviction of any felony or a crime involving moral turpitude under the laws of any State or of the United States.
- g. Revocation or suspension of, or refusal to grant, issue or renew the authority to practice as a Certified Paralegal in any State, territory or foreign nation, if at least one of the grounds for that action is the same as or equivalent to of one of the grounds for the same action as set forth in this Program.
- h. Suspension or revocation of the right to practice before any State or Federal agency.
- i. Failure of a Certified Paralegal to renew an expired Certification to practice within five (5) years from the expiration date of the Certification to practice last obtained or renewed by said Certified Paralegal.
- j. Advertising paralegal services in a manner that is false or misleading to the public.

## **X. VIOLATIONS -- PENALTIES**

A. Any person who practices or offers to practice as a Certified Paralegal without being duly certified according to this Program, or whose Certification had been suspended or revoked, is considered in violation of ESAPA's Code of Ethics.

B. Notwithstanding the existence or pursuit of any other remedy, civil or criminal, ESAPA may institute rules and administrative regulations, and/or orders of ESAPA, and maintain actions to restrain or enjoin any violation of this Program.

C. Any person who willfully makes any false representation to ESAPA in applying for a Certification under this Program is guilty of a violation of this Program and, upon notice by ESAPA, shall cease and desist utilizing the Certified Paralegal designation under this Program.

D. Failure to comply with any cease and desist request by ESAPA may result in further action to be taken by ESAPA.

## **XI. APPEAL OF A DETERMINATION OR DECISION OF ESAPA**

Any person has the right to appeal a determination made under this Program by formal written notice to ESAPA President, within thirty (30) days from the date of determination. A final determination on the appeal will be made by a majority vote of ESAPA Board of Directors within sixty (60) days of receipt of said notice.

## **XII. VOLUNTARY SURRENDER OF CERTIFICATION**

Any Certified Paralegal may voluntarily surrender their Certification at any time, for any reason.

Any Certified Paralegal notified of impending revocation of their Certification for violation of any of the rules, regulations or provisions of this Program, may apply to surrender their Certification in lieu of revocation.

## **XIII. PETITION FOR NEW CERTIFICATION AFTER REVOCATION -- PROBATION PERIOD**

A. Except for those Certified Paralegals who have been disciplined pursuant to this Program, causes for denial, probation, suspension or revocation of a Certification, a Certified Paralegal whose Certification has been revoked or voluntarily surrendered in lieu of revocation may, after one (1) year from the effective date of the revocation determination, petition ESAPA for a reinstatement of such Certification.

B. Reinstatement shall be at the sole discretion of ESAPA. Reinstatement shall not be issued unless the applicant submits evidence satisfactory to ESAPA that the applicant meets the requirements of this Program and is able to resume paralegal practice.

C. If ESAPA reinstates such Certification under the circumstances described in this section, the Certified Paralegal shall be under probation for a period of not less than one (1) year as determined by ESAPA. Any subsequent violation during the probation period shall result in automatic permanent revocation of the Certification.