

**Upcoming Issues**

- Recent legislation
- Member profiles
- CLE Opportunities
- Charity Involvement

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**FROM THE PRESIDENT:**

What an exciting year to take the helm of this great organization! Along with our new name, hopefully our new ideas, new plans and new ventures will take this group into the year 2009 with a bang!

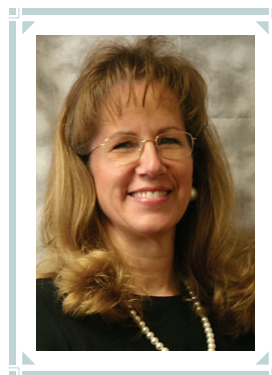
My visions for the upcoming year bring some challenges and changes that I hope will invigorate each of you and fuel new passions for keeping NePA among the most successful associations in our legal arena. Bringing District 2 (Lincoln, Nebraska) members back into the "fold" under the enthusiastic and talented leadership of District 2 Director, Carla Larson of Cline Williams, will be one of the most important goals of this Board. We are planning to not only have at least one of our monthly luncheons in Lincoln in 2009, but we also have already reserved the beautiful conference center at Mahoney State Park for our Spring 2009 seminar to enable more Lincoln members to attend. 2009 will also mark the return of our official publication, In Brief, under the talented authorship of Stephanie Henson and her com-



mittee, Barb Schmitt, Joyce Buller & Jennifer Tomanek. I know I speak for the entire organization when I say that we have missed receiving our newsletter, and I will be very excited to see its return!

Another great tribute to this organization has been its past involvement in student mentoring and student services. Assisting students in getting on the right track to becoming professionals in our field is of paramount importance. What better mentors could there be than all of you who have already made that leap and reached your individual goals! Our Student Services and Mentoring Committee, Caryn Redding, Terri Perez & MJ Skrdland will be working with the schools, (continued on page 2)

**WELCOME DISTRICT II DIRECTOR—CARLA LARSON**



I came on board to NePA's top-notch leadership team at the annual membership meeting in September, 2008, and it is an understatement to say that I am enthused about

possibilities for growing individual involvement and professional development in Lincoln area paralegals through this organization! In support of that goal, the NePA Board has offered to hold the Spring, 2009 seminar at Mahoney instead of an Omaha location, to encourage physical participation by Lincoln's paralegals, and the June, 2009 luncheon meeting will also be held at a Lincoln location (yet to be determined). ( See page 2)

## FROM THE PRESIDENT (CON'T):

the Board of Directors and our membership to reach out to students and members to pair you up so you can share your talents and help these students in their first experiences in the legal world. Please contact one of these committee members or a Board Member if you are interested in being a mentor – it is a rewarding experience and a win/win situation for all!

One of the other accomplishments our organization is proud of is our involvement in charities and causes for those less fortunate. 2009 will bring the return of many of those successful fund raisers from 2008 and hopefully, you will learn about a new and exciting cause which will benefit paralegals in active military service...stay tuned for ways that you can help!

I want to thank each and every one of you for your membership in NePA – now, let's take that membership one step further this year and I challenge you to be able to describe yourself to your firm and constituents as being an "active, involved, contributing member of NePA" instead of merely a name on the membership roster. **We need you, your talent and your passion – not just your name or your membership fee! Become active and stand out – I promise everyone will benefit and you will be a better paralegal for it!**

Thank you.

Loretta Phillips

## WELCOME DISTRICT II (CON'T):

Benefits of becoming involved in a professional paralegal organization are huge, whether attending monthly luncheon meetings, Spring and Fall Seminars, serving on a committee, or participating in philanthropic projects. 29-year paralegal D. Holmblad summed this up perfectly when she said, "My involvement has not only enhanced my career beyond words, but it has also opened many other doors that I never expected. The leadership experience is second to none and the many friendships are priceless."\*

In addition to expanding connections amongst Lincoln paralegals in the coming year and building bridges between the Lincoln and Omaha paralegal communities, I would also like to solicit suggestions and ideas from current NePA members or near-future members as to what I can personally do to encourage their career growth. Please contact me at [clarson@clnewilliams.com](mailto:clarson@clnewilliams.com). I am looking forward to an awesome year together!

\***Legal Assistant Today: The Magazine for the Paralegal Profession**, September/October 2008 issue, page 16.

## NEPA LUNCHEON MEETING SCHEDULE

### DISTRICT 1

October 29, 2008 and November 19, 2008

January 28, 2009

February 25, 2009

March 25, 2009

May 27, 2009

### DISTRICT 2

To be announced.

Check *nebraskaparalegal.org*

Watch for details!

Joint District 1 and District 2 Luncheon

June 24, 2009.

**2008 - 2009 BOARD OF DIRECTORS*****President***

Loretta Phillips, City of Omaha, Law Department

***Past President***

Kaye Benak, Koley Jessen

***Vice President***

Alison Barthel, Gross & Welch

***Secretary***

Jaci O'Brien, ACP, Adesta, LLC

***Treasurer***

Teresa Barnes, CP, Gross & Welch

***Parliamentarian***

Janie Boswell, ACP, Mutual of Omaha

***NALA Liaison***

Christina L. Koch, ACP, Inserra & Kelley

***District 1 Director***

Laurie S. Vik, CP, Kiewit Corporation

***District 2 Director***

Carla Larson, Cline Williams

***Web Administrator***

Kim Brown, Spencer Fane

***Publications Editor***

Stephanie Henson, ACP, Dial Companies

***Board of Directors Meeting Dates***

January 13, 2009—Spencer Fane

March 10, 2009—Cline Williams

May 12, 2009—The Dial Companies

July 14, 2009—Adesta

September 8, 2009—Peter Kiewit

**2008 - 2009 COMMITTEES*****Mid-Year/Annual Meeting and Seminar***

Kim Hansen-Chair, Angel Engman, Elece Raglin, Sanchali Patil, Stephanie Henson, Lori Montag, and Molly Schelhorn

***Audit Committee***

Kris McMahon, Mary Jo Schettler, Barb Schmidt

***Continuing Legal Education Committee***

Kalisha Reed, Chantelle Hope, Caryn Redding and Laurie Nading

***Library Committee***

Ann Atkinson and Linda Hess

***Membership Committee***

Alison Barthel, Chair, Jaci O'Brien

***Official Publications***

Stephanie Henson, Chair, Barb Schmidt, Joyce Buller and Jennifer Tomanek

***Nominations/Elections Committee***

Kris McMahon, Chair, Stephanie Henson

***Student Services & Mentoring Committee***

Janie Boswell, Chair, Caryn Redding, Terri Perez, and MJ Skrdland

***Student Scholarship Committee***

Teri Gibbons, Chair, Laurie Vik

***CLA Scholarship Committee***

Kim Brown, Chair, Alison Barthel and Kalisha Reed

***Website Committee***

Kim Brown, Chair, Tiffany Beatty and Misty Cowan

***Public Relations/NSBA Liaison/Law Day***

Christina Koch and Kay Benak

***Ad Hoc Committee—Treasury***

Teresa Barnes, Judy Heiserman and Sara Christianson

## WHY I'M ACTIVE IN NALA BY LINDA HESS, ACP

I like to read, walk, and garden, but I don't belong to a book club, walking enthusiasts club, or a gardening club. I pay dues to three organizations: my neighborhood association, the Nebraska Paralegal Association ("NePA"), and the National Association of Legal Assistants ("NALA"). I am an officer in one of those now: the National Association of Legal Assistants. At one time or another, I served all three as an officer. Why?

For me, there is a difference between being a dues-paying member and "belonging" to an organization. To belong, I have to actively participate. Sometimes participation comes after seeing a task to be done to further the organization's goals, like volunteering for the seminar committee. Sometimes participation is due to someone asking me to apply my skills to resolve a problem, like straightening out the accounting system for the neighborhood association. Sometimes there is a more selfish motive, like getting to know other members.

I joined NePA (then NeALA) when I (continued on page 5)



Linda Hess, ACP

## VICE PRESIDENT'S REPORT BY ALISON BARTHEL

As the Vice President of NePA, I am chairman of the Membership Committee. Another year has come and gone and I am happy to announce that as of October 20, 2008, we are 155 members strong! This includes 129 Active members, 8 Associate members, 6 Student members, 4 Honorary members and 8 Sustaining members. Getting involved in NePA allows you to network with peers of your profession and gives you the opportunity to develop an important skill set and an opportunity for professional advancement.

I would encourage all of you to talk to your fellow paralegals and encourage them to think about joining NePA if they are not already members. If you are already a member, I would encourage you to get more involved. There are a number of committees that can use your expertise. The benefits you will receive far outweigh the time you will spend. The more members we have, the more resources we have to call upon. Membership applications are available on our website at [www.nebraskaparalegal.org](http://www.nebraskaparalegal.org) and I, along with the other board members, am available to answer any questions you may have. I look forward to seeing you all at future NePA luncheons and events and remember - our members are our greatest resource!



Alison Barthel



DON'T FORGET  
TO VOTE ON  
OR BEFORE  
NOVEMBER 4TH.



*WHY I'M ACTIVE IN NALA (CON'T)*

was a fledging paralegal, looking for education and for people who had experience in the field. Attending lunches, I met people, but I didn't get to know them. The next step was joining the seminar committee. And as all of us know, once an organization finds out you will work, there is always a job to do.

My first year as a NALA member was complimentary upon passing the Certified Legal Assistant examination. I was a dues-paying member for several years before attending my first national convention in 2000. Were my eyes opened! The women and men there, all paralegals, impressed me with their knowledge, professionalism, and friendliness. There were quality education programs and presentations directed at professional development and improving the affiliated association. The seed was planted...how could I get to know these people better?

National conventions are the only time NALA members gather as a group, so I went. Each convention was a reunion with paralegals met in prior years; new names were added. Yet I didn't feel I got to know these paralegals. The obvious solution (to me) was to become more involved. After considering the options, the perfect opportunity came. Janie Boswell was leaving the NALA Certifying Board and she proposed me to fill her spot. I think two major factors led to Tita Brewster, president of NALA, inviting me to join the Board: the recommendation from a current Board member, and my interaction with members of the Board of Directors at NALA conventions. How else would Tita have pulled my name from all the qualified NALA members?

Yes, being on the Certifying Board means work. The rewards more than compensate me. It is an opportunity to work as a team with paralegals, attorneys and educators from different areas of the country. Because we spend about 14 hours a day together at two-day meetings three times a year, we come to know each other as individuals. We develop friendships, which is hard to do in the hectic pace of the NALA convention. As chair of the Certifying Board, I sit on the NALA Board of Directors. Directors broaden the circle of paralegals I am proud to know and work along side. There is no comparison between attending meetings as a dues-paying member and being one of the team carrying out the mission of a quality association. For me, it is the only way to belong.

*TO SUCCEED IN  
LIFE, YOU NEED  
THREE THINGS:  
A WISHBONE, A  
BACKBONE AND  
A FUNNY BONE.*

*-REBA MCENTIRE*



*☆ 2007-2008 CLA/CP AND ACP ☆*



Jennie L. Anderson, CP

Heather A. Bernt, ACP

Lee A. Coffin, CP

Kelly S. Elder, ACP—Discovery

Annette M. Dieteman, CP

Stephanie Henson, ACP—  
Business Organizations

Angel Engman, CP

Tammy M. Johnson, ACP—Discovery

Dawn M. Green, CP

Jaci O'Brien, ACP—Contracts

Kalisha L. Reed, CP

Jaime L. Rose, ACP—Contracts

Christine R. Schrader, CP

Joan E. Shaw, CP



## NALA LIAISON REPORT

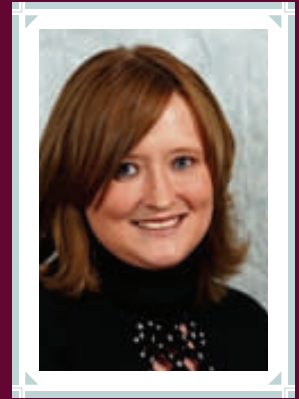
The duties of NALA Liaison include reporting to NALA about NePA and reporting to NePA about NALA. In addition, the Liaison is to encourage membership in NALA and participation in the Certified Legal Assistant and Advanced Certified Paralegal program sponsored by NALA.

Since the last report in April of 2008, I have filed with NALA one quarterly report in June of 2008 on the District 1 lunch meetings and Mid-Year Seminar of April 2008. The report also contained association information consisting of officers, fiscal year, roster, and membership numbers. The Annual Report filed with NALA as of June 1, 2008, recapped association activities for the prior twelve months including our name change and specifically highlighting our charity work. As members of NePA, we should be very proud of our accomplishments in providing clothing, materials, and funding for various charitable organizations. Attached hereto is a copy of the Annual Report I filed with NALA in June of 2008. NALA currently has 57 active members from NePA.

On July 30-August 1, 2008, I was honored to represent our association at the NALA Annual Convention in Oklahoma City, Oklahoma. There were 300 people registered for the convention, with 257 NALA members present in person or by proxy for the annual meeting. Additionally, Angel Engelman, Linda Hess, and I represented Nebraska during in Affiliated Associations Exhibit Hall. Our exhibit highlighted our charity work and we gave away a \$100.00 Gift Certificate to Omaha Steaks, which was awarded to Tammy L. Ackerman, CLA. There were 6 attendees from Nebraska at the convention. We also provided pink and white life savers and red and white life savers to further highlight our commitment to charity. NePA's exhibit booth also included the trophy we earned for fundraising at the Nebraska Race for a Cure, led by Teri Gibbons in Sarpy County, Nebraska.

The Convention also included an Installation of Officers. This year, Nebraska has several officers who will serve NALA. Ann Atkinson was elected Secretary of NALA. Janie Boswell will again serve as Region VI Director. Linda Hess will continue to serve as Chair of the Certifying Board. All three of these outstanding members of NePA sit on the NALA Board of Directors. I was honored to be chosen as part of the 2008-2009 LEAP (Leadership Enhancement and Preparation) Class of NALA, which began at the Convention. As NePA's Liaison to NALA, I attended the events and educational sessions offered by NALA, including the Mediation Institute education sessions (four days), the opening remarks, keynote speaker, annual meeting, awards presentations, officer inductions, and social events. Thank you for the opportunity to represent you in Oklahoma City.






Christina Koch, NALA Liaison



Christina Koch, ACP  
NALA Liaison

*The real trouble with reality is that there's no  
background music.*

# NOVEMBER 2008

SUN	MON	TUE	WED	THU	FRI	SAT
						1
	3		5	6	7	8
9	10		12	13	14	15
16	17	18		20	21	22
23 30	24	25	26		28	29

# DECEMBER 2008

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
	8	9	10	11	12	13
14	15	16	17	18	19	20
	22	23	24	25 		27
28	29	30	31 			

**November Dates to Note:**

- 2nd—Daylight Savings Time
- 4th—Election Day
- 11th—Veterans' Day
- 19th—NePA Luncheon
- 27th—Thanksgiving

Happy Birthday to all our November and December Babies!



**December Dates to Note:**

- 7th—Pearl Harbor Remembrance
- 21st—Hanukkah Begins
- 25th—Christmas
- 26th—Kwanzaa
- 31st—New Year's Eve

## NALA CONNECTION—ANN ATKINSON, ACP



My name is Ann Atkinson, a NePA member for 25 years and currently Secretary of the National Association of Legal Assistants. I have been employed at Kutak Rock LLP for 31 years, originally as a secretary but for most of the time as a paralegal in the public finance department. My husband, Ed, and I

have two married sons (John and Kevin) and five grandchildren (Machaela, Andrea, Christopher, Katelyn and Jade). And just so we aren't accused of being "empty nesters", we now have two shz tsu "children".

I became active in NALA by applying for the Member Exchange Program in 1999. I was pleased to have been selected to present my session on Public Finance at the annual convention held that year in Tampa, Florida. From there, I served on the Continuing Education Council for 3 years, was your Regional Director for 2 terms and now am an officer, hopefully working my way up the ladder to be NALA President.

The NALA Board meets four times a year. At the recent October 4 NALA Board meeting, we spent a day with Todd Saxton, a Tulsa businessman who specializes in leadership training. His presentation was based on a book published by ASAE and the Center for Association Leadership entitled "7 Measures of Success—What Remarkable Associations Do That Others Don't". We discussed the importance of NALA's mission statement and our commitment to that vision, as it directs all that we do for the association. We also spent a great deal of time examining the concept of a "member-driven association".

Todd had us participate in an exercise to illustrate these points. There are 19 Board members and all of us stood in a big circle. One person was given a small stuffed animal (I'll call him "Toby") and was told she had to toss Toby to someone in the circle and from there Toby had to be tossed to each of us until he

ended up back with the original person (and we were timed). Sound easy? It was, except that if we dropped Toby, we had to start over. We mastered that. Then Todd added another stuffed animal ("Brady"). We had to receive and toss from the same individuals we did the first round, only now there were two stuffed animals. Inevitably, we dropped Brady and/or Toby and had to start over, and then we were encouraged to come together to discuss ways we could master this task without any mistakes. Thinking we were done with the exercise, we were patting ourselves on the back. However, now Todd added 5 more stuffed animals of various sizes and shapes. We had to keep all 7 of them going at the same time! Several drops on the floor, group discussions and many laughs later, we were successful and even managed to cut down our time per toss.

What did we learn? We learned how to apply our mission statement, i.e., in this case getting the stuffed animals successfully tossed around the circle. We learned how to relate to our "members" by concentrating on the task at hand, communicating with our "partners" and being aware of what was going on around us at all times. We were meeting deadlines. Good lessons to learn and ones that can be used no matter what kind of a project we are involved in, whether at work or in association activities.

With that in mind, I would like to ask each of you what suggestions you have for NePA and furthering its goals? Perhaps you would like to serve on a committee or be an officer. Or maybe you have a fantastic idea for a community project. You may also know someone who would be a good luncheon speaker. Or perhaps you are new to the association and are just looking for someone to network with. People want to be connected, and I encourage you to speak up. We should be proud of the great attendance at our luncheon meetings, the response from the legal community to our annual breakfast and the information-packed seminars put together by our members. You should be very proud. I know I am proud of you!

Ann

## PARALEGALS AND OVERTIME: *WHAT YOUR BOSS DOESN'T KNOW MIGHT HURT YOU*

*By: C. Andrew Head*

Whether it's preparing for trial or working on a closing, if there is midnight oil to be burned, paralegals are there. More often than not, they do the work that attorneys sign off on as their own, and like the attorneys that rely so heavily on their expertise and problem-solving abilities, they are trusted professionals who shoulder major responsibilities without needing daily supervision. They work hard, they know their stuff, and they often command higher salaries as a result. So how can it be that the law generally treats them no differently than an hourly-paid cashier when it comes to overtime pay?

First, the basics. Under the Fair Labor Standards Act ("FLSA"), employees are generally "non-exempt" and therefore entitled to overtime pay at a rate of time and a half for all time worked over 40 hours in a given work week, unless the employee falls within one or more exemptions under the Act. It is the employer's burden to prove that an employee is exempt, and the exemptions are to be construed narrowly in order to give broad protection to the workers covered by the Act. If an employee brings a civil action and proves that his or her employer failed to pay overtime compensation as required by the FLSA, the employee is entitled to recover the amount of his or her unpaid overtime compensation for two years prior to the filing date (three years if the employee proves that the employer's violation was willful), in addition to an equivalent amount as liquidated damages (unless the employer can prove the objective and subjective elements of its good faith defense), plus a mandatory award of the amount of attorneys' fees and costs that the court deems reasonable. Moreover, employees can proceed as a collective action with others similarly situated rather than going it alone, resulting in shared costs and other benefits to the employee litigant. The FLSA also contains an anti-retaliation provision which forbids an employer from taking adverse action against an employee for engaging or participating in protected activity regarding the assertion of overtime rights under the Act.

Next, a little common sense. Not all law firms and corporations are knowingly trying to short-change their paralegals. Some pay generous bonuses in recog-

nition for hard work throughout the year; others have no idea that their trusted, experienced paralegals could possibly be "non-exempt." Many understand that salaried employees are expected to work the number of hours necessary to do the job in exchange for that salary, and erroneously believe that therefore only hourly employees can be "non-exempt."

Regardless of what your boss may be telling you, paralegals generally do not fall within any of the exemptions to the overtime laws contained in the FLSA, the federal law applicable to most employers. In a series of opinion letters beginning in 1979 and continuing through 2005, despite various amendments to the FLSA regulations along the way, the Department of Labor ("DOL") has uniformly taken the position that paralegals failed to satisfy the FLSA's "administrative" exemption—the exemption most likely to be applicable to the majority of paralegals—because their primary duties involve producing the work product of their employer, rather than performing activities supporting their employer's administrative operations, and because their primary duties do not involve the exercise of discretion and independent judgment required by the regulations, because such discretion and judgment must be exercised by the supervising attorney in order to avoid the unauthorized practice of law by a non-lawyer. Although the DOL's opinion letters generally focused on the production work performed by paralegals employed by outside law firms rather than paralegals providing in-house administrative support to a corporate legal department, a 2006 opinion letter similarly found that a Senior Legal Analyst for a corporation was non-exempt and therefore entitled to overtime because 90% of his or her responsibilities included "analyzing facts, identifying the legal issues involved, and then providing [his or her] interpretation of the law in a memorandum format for an attorney's review," and only 10% of his or her responsibilities included administrative support such as reviewing new materials, cost analysis and formulating cost-savings plans, and training personnel. Thus, although certain in-house paralegals (continued on page 10)

## PARALEGALS AND OVERTIME: *WHAT YOUR BOSS DOESN'T KNOW MIGHT HURT YOU (CON'T.)*

may be more involved in duties supporting the administrative operations of the company itself rather than producing the work of the legal department, it is not clear from the DOL's opinion letters whether even those in-house paralegals would satisfy the "administrative" exemption under the FLSA.

The result is no different under the FLSA's "professional" exemption even for those paralegals who engaged in a particularized course of study to obtain paralegal certification in addition to receiving a four-year baccalaureate degree, because the DOL has concluded that the actual duties of paralegals, while requiring specialized legal training, typically do not require the type of advanced specialized degrees contemplated by the regulations necessary to satisfy the requirements of the "professional" exemption. Unlike attorneys who must have a law degree as required by state law in order to obtain a license to practice law, there is no similar requirement that a paralegal must have engaged in an extensive and specialized degree of study in order to perform the duties of a conventional paralegal (regardless of whether a particular employer indicates a preference for such advanced paralegal degrees during the hiring process), and an advanced specialized academic degree is not a standard prerequisite for entry into the field. The DOL expressly addressed the paralegal position under the "professional" exemption in 29 C.F.R. § 541.301(e), stating:

(7) Paralegals. Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist

on patent matters, that engineer would qualify for exemption.

Thus, the DOL has found that even those paralegals having a four-year college degree and a paralegal certificate do not satisfy the "professional" exemption if their job duties are that of a "conventional" paralegal. If, however, the paralegal possesses an advanced specialized degree in another professional field and is required to apply the advanced knowledge in that field as an expert in performing his or her paralegal duties (i.e., a CPA with an MBA performing expert forensic accounting work), then that particular paralegal may be exempt from the FLSA's overtime compensation requirements.

Some employers may look to the new "highly-compensated employee" exemption under the 2004 regulations in the hopes of not having to pay an overtime premium to paralegals who are already highly compensated. The "highly-compensated employee" exemption applies only to those employees: (a) who earn a total annual compensation of \$100,000 or more (which may include commissions and non-discretionary bonuses or other non-discretionary compensation), including a salary of at least \$455 per week; (b) whose primary duty includes performing office or non-manual work; and (c) who perform at least one of the exempt responsibilities of an exempt executive, administrative or professional employee.

Thus, even if the paralegal is earning over \$100,000.00 per year, this last provision makes it difficult to satisfy this exemption. Taking these in order, in order to satisfy the executive exemption, a highly-compensated paralegal would still have to either (i) supervise two or more other employees, (ii) have the authority to hire or fire other employees, or (ii) effectively manage the company/firm or a customarily recognized department within the company/firm (e.g., the company's legal department). To satisfy the administrative exemption, the highly-compensated paralegal would still either have to (i) perform work directly related to the management or general business operations of the company/firm or of its clients, or (ii) exercise

## PARALEGALS AND OVERTIME: (CON'T.)

independent judgment and discretion with respect to matters of significance to the company/firm – both of which requirements the DOL has previously found that paralegals generally do not satisfy. Finally, with regard to the professional exemption, without an advanced degree in a specialized field that is required for expert work in that field as a specialized paralegal, even a highly-compensated paralegal would not satisfy the professional exemption.

In summary, law firms have objected to the treatment of paralegals as “non-exempt” under the FLSA for decades. The DOL has consistently overruled their objections, and the recent amendments to the FLSA regulations in 2004 did nothing to change the “non-exempt” status of most paralegals. So no matter how convincing your boss may sound when he or she explains that paralegals are exempt administrative or professional employees, better to get a second opinion from an attorney with experience in this area of the applicable wage and hour laws. What your boss doesn't know might hurt you, and every week that slips by without filing an action to assert your overtime rights is another week of your overtime pay that is lost forever from that trial or closing two or three years ago.

*C. Andrew Head is a partner with Crowley Clarida & Head LLP (<http://www.cchlawfirm.com>, 678-888-0036, [ahead@cchlawfirm.com](mailto:ahead@cchlawfirm.com)) in Atlanta, Georgia. Mr. Head is licensed by the State Bar of Georgia and represents employees in individual and collective action overtime/wage and hour cases.*

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*May the joys of the Season be yours!*

## VOTERS DECIDE ON JUDGE RETENTION

As important as it is to vote for the Republican and Democratic candidates who will represent us in Lincoln and Washington, it is just as important to vote on whether or not to retain the 53 judges up for a performance review this Election Day. For a list of judges whose names will appear on the November 4 ballot, go to [www.sos.ne.gov](http://www.sos.ne.gov). Click on "2008 Elections" and "Judicial Retention Filings". Supreme Court and Workers Compensation Court judges receive a statewide vote; other judges appear on ballots only in their districts.

To review the 2008 Judicial Performance Evaluation and for advice on evaluating judges: [www.nebar.com](http://www.nebar.com). Click "public information" and "Judicial Evaluation". Lawyers evaluate judges on temperament, legal knowledge, fairness, time management and other qualities. They are asked for a yes or no on whether the judge should be kept in office.



*Courtesy of The Omaha World Herald, Sunday, October 26, 2008.*

## FROM THE EDITOR:

Dear Members:

As the new Official Publications Editor, I wanted to let you know that the committee members, Barb Schmidt, Joyce Buller and Jennifer Tomanek and I will be working very hard to give you the best newsletter we can and to keep it as current and interesting as possible. Since I had decided to get this first issue out as soon as possible, to "test the waters" as it were, please bear with us, its been awhile since I have done this, and I didn't give the committee a whole lot of time, so I am asking you to let us know what you think, what you would like to see in your newsletter and if you have an article you would like to share, please let us know. Since we have been issuing the *In Brief* via e-mail, we are not as limited as to content and can include more articles, etc.

Please check [nebraskaparalegal.org](http://nebraskaparalegal.org), NePA's website for pictures from the Annual Meeting and Breakfast and Board Meeting minutes.

I look forward to your comments, suggestions and criticisms as we move into another year. Feel free to contact me at your convenience. I may be reached at:

*Stephanie Henson, ACP, (402)493-2800 x 3152, or [henson@diaproperties.com](mailto:henson@diaproperties.com).*



## PARALEGAL COMPENSATION:

*A PRIMER TO PERMISSIBLE AND IMPERMISSIBLE PAY STRUCTURES*

By: Peter G. Golden

Last month, we highlighted the federal overtime law as it applies to paralegals, concluding that in most cases, paralegals are not exempt from the Fair Labor Standards Act's overtime laws and must be appropriately compensated for any hours work in excess of 40 in a given week <sup>(1)</sup>. This month, we'll tackle the ethical boundaries of creatively compensating paralegals for something other than the mere quality and quantity of the work performed.

Has your firm ever proposed to give you a cut of a contingency fee recovery on a case you've been assigned to? Ever been on a job interview where the lawyer promised you a referral fee for any case you brought to the firm as part of the overall compensation package? Well, these compensation arrangements can sure seem enticing, but do your state's rules of professional responsibility allow for them? Probably not.

While the rules of professional conduct are not identical in every state, in virtually all states, general "fee splitting" or specific sharing of fees received from a particular matter is not allowed. Thus, lawyers may not, by advance agreement, make contingency payments to paralegals based on the outcome of a case. For example, your boss likely cannot, within the bounds of professional responsibility, promise to pay you a bonus equivalent to 5% of the amount of attorneys' fees recovered in a particular matter. This, and similar fee splitting arrangements have been near universally rejected by state bar associations and boards of ethics. The rationale for prohibiting this conduct is to "protect the lawyer's professional independence and judgment." <sup>(2)</sup>

But to the contrary, attorneys may compensate paralegals based on the quantity and quality of their work and the value of that work to the law practice. <sup>(3)</sup> Thus, in addition to regular compensation, paralegals generally may also be paid discretionary merit based bonuses or bonuses based on the overall success of the firm or practice area. <sup>(4)</sup> Thus, a lawyer or law firm that has a profitable year may award a paralegal a bonus based on the overall success of the firm, or the paralegal's contribution or extraordinary work on a particular case.

Separate from the fee splitting issue, is the issue of referral fee payments. In a nutshell, lawyers

are prohibited from paying paralegals for referring legal work to the firm. The rationale for prohibiting an attorney from sharing a percentage of attorney's fees with a paralegal is that it may lead to improper interference in a case by the paralegal. <sup>(5)</sup> In fact, it was referral fee payments to non-lawyers and charges of fee splitting that ultimately resulted in disciplinary action against attorneys in one highly successful New Jersey law firm. In 2000, Tomar Simonoff, a well known personal injury firm in New Jersey dissolved after allegations surfaced that it paid referral fees to paralegals, secretaries and other non-lawyers and that it conditioned the bonus of an office administrator on office revenue. During proceedings to determine whether the attorneys involved acted improperly, numerous firm employees came forward to claim that paralegals and secretary referral fees were a standard part of the compensation package. Ultimately, the New Jersey Disciplinary Review Board recommended that two attorneys in the firm have their license suspended for one year. Thus, for attorneys, the punishment for providing non-lawyers with improper forms of compensation can be significant.

Finally, what do you do if you were promised a fee-splitting or referral fee that your boss later decided not to pay? Can you still recover this compensation even though the payment structure may be unethical? Perhaps. At least one court has found that despite an attorney's ethical violation by promising her paralegal a contingency fee bonus that violated the state's ethical cannons, the bonus was still due and payable. In *Patterson v. Law Office of Lauri J. Goldstein, P.A.*, 980 So.2d, 1234 (Fl. Ct. App. 2008), the attorney promised to pay her paralegal a bonus equal to 10% of the fees generated from matters on which the paralegal worked. When the attorney later refused to pay the bonus, the paralegal filed suit in Florida Circuit Court alleging breach of contract. On appeal, the Florida Court of Appeals held that even though this classic example of a fee splitting arrangement violated Florida's Rules of Professional Conduct, the agreement was not void. The court pointed out that (1) the paralegal was not a member of the Florida Bar and thus not herself guilty of any wrongdoing and (2) she

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was not aware of the illegal fee splitting rules at the time the agreement was made, and thus, not aware that her boss was breaking those rules. (6) The Court concluded that:

"While we recognize generally that the Rules of Professional Conduct of the Rules Regulating the Florida Bar promote the public interest, we find that the public interest is not advanced if an attorney is permitted to promise a bonus arrangement that violates the fee-sharing rule, and then invoke the Rules as a shield from liability under that arrangement."

Thus, the paralegal was entitled to payment of her bonus. Similarly, if you find that you have already gotten yourself into an impermissible fee-splitting arrangement that your firm now refuses to honor, depending on the state in which *you* live, you too, may be able to recover for the unkept promise.

In summary, law firms are generally prohibited from engaging in fee-splitting bonuses or referral fee arrangements with paralegals as they likely violate the lawyer's ethical obligations under the applicable rules of professional conduct. Thus, be very wary if a prospective or current employer proposes such an agreement to *you* even if the potential bonus sounds lucrative. Better to take your money up front through a higher weekly wage than banking on the promise of something that is not within the ethical bounds of practice.

1 See, Paralegals and Overtime: What Your Boss Doesn't Know Might Hurt You, C. Andrew Head, Crowley Clarida & Head LLP, [ahead@cchlawfirm.com](mailto:ahead@cchlawfirm.com); September 2008 [GatewayParalegal.com](http://GatewayParalegal.com).

2 Patterson v. Law Office of Lauri 3. Goldstein, 980 So.2d 1234, 1237 (Fl. Ct. App. 2008). 3 See, Guideline 9 of the ABA Model Guidelines for the Utilization of Paralegal Services. 4 See, Rule 5.4(a)(4) of the Model Rules of Professional Conduct. 5 Patterson, 980 So.2d at 1237.

6 See, e.g. Fla. Rules of Professional Conduct 4-5.4(a)(4).

*If you have any questions regarding this article or law month's article regarding unpaid overtime, you can contact the author, Peter G. Golden (licensed to practice in Georgia and Michigan) or C. Andrew Head (licensed to practice in Georgia). Mr. Golden and Mr. Head are partners with Crowley Clarida & Head LLP ([www.cchlawfirm.com](http://www.cchlawfirm.com)), 678-888-0036.*



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