

# ADVISORY ETHICS OPINION 1999-03

## SYNOPSIS:

With client consent, a supervising attorney may permit a paralegal to conduct a loan closing on behalf of a lender client where the client consents, the paralegal's role is ministerial in nature, and the attorney is available for questions, at least by telephone.

## ISSUE:

May a supervising attorney permit a paralegal to conduct a real estate closing on behalf of a lender client where the paralegal's role is limited to preparation of the Settlement Statement and supervising the execution of documents.

## FACTS:

Attorney A represents a number of lenders in connection with real estate loan transactions. Part of the service provided by Attorney A is the actual closing of the loan. Attorney A would like to permit his paralegal to conduct loan closings. The paralegal's role would be limited to insuring that the closing documents are properly witnessed and acknowledged and preparing the Settlement Statement. Attorney A would not attend the closing.

## DECISION:

The instant request provides us with an opportunity to examine the role of paralegals in Vermont law practices after the adoption of the Vermont Rules of Professional Conduct by our Supreme Court effective September 1, 1999. We find the relevant rules to be Rule 5.3 and Rule 5.5(b).

Rule 5.3 provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct ratifies, the conduct involved; or
  - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Paralegals have become an integral part of many successful real estate practices in the State of Vermont and they provide a very valuable service. The delegation of appropriate tasks to a competent paralegal allows the supervising attorney to focus on the legal issues which require his or her expertise. Competent paralegals, efficiently utilized, also make a law practice more cost effective and reduce the ultimate fees to be borne by its clients. These benefits do not come without their burdens. Partners in a law firm and supervising lawyers must take the time to insure that a paralegal is competent to complete all assigned tasks. They must also satisfy themselves that the paralegal understands the importance of the clients right to and expectation of confidentiality and other relevant ethical considerations. A law firm must take ultimate responsibility for the paralegal's work product. Under the provisions of Rule 5.3, members of law firms and supervising attorneys may find themselves faced with professional discipline if they direct a paralegal to take an action which would warrant professional discipline if performed by a lawyer or if they ratify or fail to take remedial action upon learning of such activities after the fact.

The second concern with respect to the utilization of paralegals is the unauthorized practice of law. Rule 5.5(b) provides as follows:

A lawyer shall not: ...

- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Many paralegals are thoughtful, organized and detail oriented people who acquire and retain a great deal of knowledge about the law as they assist their supervising attorneys. The level of competence and experience which make them indispensable to a

supervising attorney may also lead to over delegation and over reliance. A supervising attorney should never delegate duties which require an attorney's professional judgment, except to another attorney. A supervising attorney should never allow a paralegal to offer legal advice to a client. Steps should be taken to insure that clients know when they are dealing with a paralegal rather than a lawyer and in cases such as this where the paralegal is handling a closing, the client must be informed of the paralegal's role.

In the case at hand, with client consent, Attorney A may allow his paralegal to handle loan closings within the framework discussed above, provided that his lender client is satisfied with the arrangement. The work to be performed by the paralegal at the closing should be ministerial in nature. The paralegal should not explain the legal significance of the documents to be executed and should not answer legal questions posed at the closing. Attorney A or another attorney in his firm should be available, at least by telephone to handle any legal issues which might arise. We note that this Opinion is consistent with other jurisdictions.<sup>1</sup>

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<sup>1</sup> See, New York Bar Ethics Opinion 677 (12/12/95); Wisconsin Bar Ethics Opinion E-95-3 (5/29/95)