

Nassau Bar OK's Real Estate Closings by Paralegals

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An ethics opinion of the Nassau Bar has advised that under the general provisions of DR 1-104(C) (requiring a law firm to supervise the work of partners, associates, and nonlawyers who work at the firm), a lawyer may authorize a paralegal to appear at and consummate real estate closings without the lawyer's attendance. Nassau County Bar Ass'n. Committee on Professional Ethics, Op. 02-3, 12/20/02.

The Committee raised three separate questions:

1. Under what circumstances may a law firm use a paralegal to close a real estate transaction?
2. How shall the firm compute the compensation to the paralegal who handles closings?
3. May the law firm pay the nonlawyer manager of its closing department, in lieu of salary, a percentage of revenue or profit earned by the closing practice.

Answer to Question 1: the law firm may use a paralegal to handle real estate closings if a lawyer within the firm retains and exercises supervisory control over the paralegal. Evidence of supervisory control would be a direct relationship between the lawyer and the client, supervision over the details of the closing, and complete responsibility and accountability for the work product. The supervising lawyer can accomplish these things without attendance at the closing.

Under EC's 3-5 and 3-6, a lawyer may delegate tasks not involving professional judgment to persons with specialized knowledge of certain areas of the law. In this instance, the law firm intends to exercise varying degrees of supervision over its paralegals, depending upon their relative training and skill. This is reasonable under the circumstances.

As to Question 2: the law firm may pay the paralegal on a per closing basis, an amount determined by dividing the paralegal's annual salary by the number of closings the paralegal can reasonably be expected to perform in the year. In this way, a paralegal who performs more than the anticipated number of closings will earn more than one who performs less than the anticipated number.

As to Question 3: the law firm may not pay the nonlawyer manager of its closing department a percentage of revenue derived from the closings. This would amount to an impermissible sharing in law firm profits. The Committee rejected the law firm's argument that its proposal should be permitted under DR 3-102(A), which authorizes participation by non-lawyers employees in a retirement plan based on profit-sharing. This Rule does not permit a nonlawyer to share in the profits from a segment of the firm's practice. Compensating nonlawyers out of specific matters or designated revenue is prohibited under NY Judiciary Law §491.