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Formal Advisory Opinion No. 86-5

State Bar of Georgia
Issued by the Supreme Court of Georgia
On May 12, 1989
Formal Advisory Opinion No. 86-5

For references to Standard of Conduct 24, please see [Rule 5.5\(a\)](#).

For references to Rule 3-103 (Canon III) please see [Rule 5.5\(a\)](#).

For references to EC 3-1, please see Comment 2 of [Rule 5.5](#).

For references to EC 3-2, please see [Rule 1.1](#) and Comment 5 of [Rule 1.1](#).

For references to EC 3-6, please see [Rule 5.3\(b\)](#) and Comment 1 of [Rule 5.3](#).

For references to DR 3-101(A), please see [Rule 5.5\(a\)](#).

For references to DR 3-102(A), please see [Rule 5.4\(a\)](#).

For references to DR 3-103, please see [Rule 5.4\(b\)](#).

For an explanation regarding the addition of headnotes to the opinion, [click here](#).

Ethical Propriety of Lawyer's Delegating to Nonlawyers the Closing of Real Estate Transactions.

The closing of real estate transaction constitutes the practice of law as defined by O.C.G.A § 15-19-50. Accordingly, it would be ethically improper for lawyers to permit nonlawyers to close real estate transactions. Certain tasks can be delegated to nonlawyers, subject to the type of supervision and control outlined in State Bar Advisory Opinion No. 21. The lawyer cannot, however, delegate to a nonlawyer the responsibility to "close" the real estate transaction without the participation of an attorney.

Correspondent asks whether it is ethically permissible for a lawyer to delegate to a nonlawyer the closing of real estate transactions. This question involves, among other things, an interpretation of Standard 24, Rule 3-103 (Canon III), EC 3-1, EC 3-2, EC 3-6, DR 3-101 (A), DR 3-102 (A), and DR 3-103. With the exception of Standard 24, all of the foregoing Ethical Considerations and Directory Rules are cited and quoted in State Bar Advisory Opinion No. 21 (attached hereto).

Standard 24 provides as follows:

A lawyer shall not aid a nonlawyer in the unauthorized practice of law. A violation of this Standard may be punished by a public reprimand.

As the role of nonlawyers (particularly paralegals and legal secretaries) in the closing of real estate transactions has expanded in recent years, questions have arisen as to the scope of duties which can be delegated to nonlawyers. A general discussion of duties which may ethically be delegated to nonlawyers can be found in State Bar Advisory Opinion Nos. 19 and 21. In short, those Advisory Opinions stress that

Avoidance of charges that the paralegal is engaging in the unauthorized practice of law may be achieved only by strict observance of the direction found in EC 3-6, quoted above, indicating that delegation of activities which ordinarily comprise the practice of law is proper only if the lawyer maintains a direct relationship with the client involved, supervises and directs the work delegated to the paralegal and assumes complete ultimate professional responsibility for the work product produced by the paralegal. Supervision of the work of the paralegal by the attorney must be direct and constant to avoid any charges of aiding the unauthorized practice of law. State Bar Advisory Opinion No. 21.

The question to be addressed in this opinion is whether the closing of a real estate transaction constitutes "the practice of law." This in turn depends upon what it means to "close" a real estate transaction. If the "closing" is defined as the entire series of events through which title to the land is conveyed from one party to another party, it would be ethically improper for a nonlawyer to "close" a real estate transaction.

O.C.G.A. § 15-19-50 states that the "practice of law" includes "conveyancing," "the giving of any legal

advice," and "any action taken for others in any matter connected with the law." In Georgia Bar Association v. Lawyers Title Insurance Corporation, 222 Ga. 657 (1966), the Georgia Supreme Court characterizes the "closing of real estate transactions between applicants for title insurance and third persons" as the rendering of legal services and advice. Moreover, to the extent that any legal advice is given during any part of the closing, this would constitute "the practice of law" by definition and could not be ethically delegated to nonlawyers.

In light of all of the foregoing, it appears that the closing of real estate transactions constitutes the practice of law as defined by O.C.G.A. 15-19-50. Accordingly, pursuant to Standard 24, Canon III, and the Ethical Considerations and Disciplinary Rules cited above, it would be ethically improper for a lawyer to aid nonlawyers to "close" real estate transactions. This does not mean that certain tasks cannot be delegated to nonlawyers, subject to the type of supervision and control outlined in State Bar Advisory Opinion No. 21. The lawyer cannot, however, delegate to a nonlawyer the responsibility to "close" the real estate transaction without the participation of an attorney.

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